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THE GENERAL STATUTES OF NORTH CAROLINA

CONTAINING GENERAL LAWS OF NORTH CAROLINA THROUGH THE SESSION LAWS OF 1977

Prepared under the Supervision of the Department of Justice of the State of North Carolina

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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

Part I

1978 Replacement Volume

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Scope of Volume

Statutes:

Full text of Chapters 106 through 112 of the General Statutes of North Carolina, including all enactments through the Session Laws of 1977, heretofore contained in 1975 Replacement Volume 3A of the General Statutes of North Carolina and the 1977 Cumulative Supplement thereto.

Annotations:

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

North Carolina Reports volumes 1-292 (p. 643).
North Carolina Court of Appeals Reports volumes 1-33 (p. 240).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-554 (p. 1074).
Federal Supplement volumes 1-431 (p. 434).
Federal Rules Decisions volumes 1-74 (p. 213).
United States Reports volumes 1-419 (p. 984).
Supreme Court Reporter volumes 1-97 (p. 2204).
North Carolina Law Review volumes 1-49 (p. 1006), volume 55 (pp. 1-750).
Wake Forest Intramural Law Review volumes 2-13 (p. 269).
Duke Law Journal volumes 3 (p. 485)-6 (p. 1395).
North Carolina Central Law Journal volume 2 (pp. 1-164), volume 3 (pp. 123-268), volume 7 (pp. 201-413), volume 8 (pp. 1-122).
Opinions of the Attorney General.

Abbreviations

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

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

Preface

Volume 3A, last replaced in 1975, accumulated a supplement nearly equalling the bound volume in size and including, among other things, extensive changes in the chapters relating to agriculture, social services, child welfare, conservation and development and education and new Chapters 113B, North Carolina Energy Policy Act of 1975 and 115B, Tuition Waiver for Senior Citizens. Due to the substantial increase in the amount of material incorporated in Volume 3A, the current replacement is accomplished by the division of the volume into two separate volumes, Volume 3A, Parts I and II. These 1978 Replacement Volumes are issued to incorporate the new material in the bound volumes and to eliminate what is obsolete.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, such opinions which construe 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 recompiled volumes have been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department.

RUFUS L. EDMISTEN
Attorney General

March 1, 1978

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ARTICLE 1.

Department of Agriculture.

Part 1. Board of Agriculture.

§ 106-1. Constitutional provision. — The General Assembly shall establish a Department of Agriculture, Immigration, and Statistics, under such regulations as may best promote the agricultural interests of the State, and shall enact laws for the adequate protection and encouragement of sheep husbandry. (Const., Art. III, s. 17; Rev., s. 3930; C. S., s. 4666.)

Cross Reference. — As to the authority of the Department of Agriculture to regulate production and sale of pen-raised quail for food purposes, see § 113-105.3.

This section is identical with the former constitutional provisions, Art. III, § 17, which was not self-executing, but simply directed the legislature to establish the Department of Agriculture, Immigration, and Statistics. Cunningham v. Sprinkle, 124 N.C. 638, 33 S.E. 138 (1899).

Cited in Nantahala Power & Light Co. v. Clay County, 213 N.C. 698, 197 S.E. 603 (1938).

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§ 106-2. Department of Agriculture, Immigration, and Statistics established; Board of Agriculture, membership, terms of office, etc. — The Department of Agriculture, Immigration, and Statistics is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of 10 other members from the State at large, so distributed as to reasonably represent the different sections and agriculture of the State. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the State, one who shall be a practical poultryman to represent the poultry interest of the State, one who shall be a practical peanut grower to represent the peanut interests, one who shall be a man experienced in marketing to represent the marketing of products of the State. The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such Board shall be filled by the Governor for the unexpired term. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession. (Code, s. 2184; 1901, c. 479, ss. 2, 4; Rev., s. 3931; 1907, c. 497, s. 1; C. S., s. 4667; 1931, c. 360, s. 1; 1937, c. 174.)

State Government Reorganization. — The Board of Agriculture was transferred by § 143A-59, enacted by Session Laws, 1971, c. 864.

Appointment of Members. — Members of the State Board of Agriculture are not constitutional officers, but being of legislative creation, are within the power of legislative appointment. They are not exclusively, nor of necessity, within the power of executive appointment. Cunningham v. Sprinkle, 124 N.C. 638, 33 S.E. 138 (1899).

Actions against Board. — The Board of Agriculture is a department of the State government and an action cannot be maintained against it without the consent of the State. Chemical Co. v. Board of Agriculture, 111 N.C. 135, 15 S.E. 1032 (1892).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 106-3. Compensation of members. — Each member of the Board of Agriculture shall receive compensation for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his residence. He shall also receive necessary traveling expenses for the distance to and from Raleigh. When attending any committee meeting each member of the committee, other than the chairman, shall receive the same per diem rate and mileage as is fixed for attending meetings of the Board. (1901, c. 479, s. 3; Rev., s. 3932; 1919, c. 247, s. 10½; C. S., s. 4668.)

Cross Reference. — See current appropriations act for per diem rate.

§ 106-4. Meetings of Board. — The Board of Agriculture, herein established, hereafter called "the Board," shall meet for the transaction of business in the City of Raleigh at least twice a year, and oftener, if called by the Commissioner of Agriculture. (1901, c. 479, s. 3; Rev., s. 3935; C. S., s. 4669; 1921, c. 24; 1929, c. 252; 1931, c. 360, s. 2.)

§ 106-5. Executive committee and finance committee. — The Board shall elect from its members an executive committee of four, of which committee the Commissioner shall also be ex officio a member and chairman. The Board shall elect a finance committee of five from its numbers. The Board shall prescribe the powers and duties of these committees, and the Commissioner may call meetings of these committees whenever in his opinion such meetings are desirable for the good of the Department. (Rev., s. 3936; 1907, c. 876, s. 1; C. S., s. 4670.)

§ 106-6. Moneys received to be paid into State treasury. — All moneys arising from tonnage charges on fertilizers and fertilizing materials, inspection taxes on cottonseed meal and concentrated commercial feedingstuff, and from the sale of any property seized and condemned under the provisions of this Chapter, and all other moneys which may come into the hands of the Commissioner of Agriculture or other officer, member or employee of the Department of Agriculture by virtue of this Chapter, shall be paid into the State treasury by the Commissioner of Agriculture, and shall be kept on a separate account by the Treasurer as a fund for the exclusive use and benefit of the Department of Agriculture. (1876-7, c. 174, s. 22; Code, s. 2208; Rev., s. 3937; C. S., s. 4671.)

§ 106-7. Power of Board. — The Board shall be empowered to hold in trust and exercise control over donations or bequests made to it for promoting the interests or purposes of the Department. (1901, c. 497, s. 3; Rev., s. 3933; C. S., s. 4672.)

§ 106-8. May require bonds of officers. — Bonds may be required for such amounts as the Board may think best for all officers of the Department who handle funds. (1901, c. 479, s. 14; Rev., s. 3934; C. S., s. 4673.)

§ 106-9. Annual report. — The Board shall annually make a report to the Governor, to be transmitted by him to the General Assembly the years when in session, of its work and matters relating thereto, which report shall contain a statement of all receipts and expenditures and the objects for which expended. (1907, c. 876, s. 2; C. S., s. 4674.)

§ 106-9.1. Investment of surplus in agriculture fund in interest-bearing government securities. — The Board of Agriculture, with the approval of the Governor and Council of State, is hereby authorized and empowered whenever in their discretion there is a cash surplus in the agriculture fund in excess of the amount required to meet the current needs and demands of the Department, to invest said surplus funds in bonds or certificates of indebtedness of the United States of America or bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the State of North Carolina. The said funds shall be invested in such obligations as in the judgment of the Board of Agriculture, the Governor, and the Council of State may be readily converted into money. The interest and revenue received from such investment or profits realized from the sale thereof shall become a part of the agriculture fund and be likewise invested. (1945, c. 999.)

Part 1A. Collection and Refund of Fees and Taxes.

§ 106-9.2. Records and reports required of persons paying fees or taxes to Commissioner or Department; examination of records; determination of amount due by Commissioner in case of noncompliance. — (a) Every person paying fees or taxes to the Commissioner of Agriculture or to the Department of Agriculture under the provisions of this Chapter shall keep such records as the Commissioner may prescribe to indicate accurately the fees or taxes due to the Commissioner or Department, and such records shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any person failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

(b) It shall be the duty of the Commissioner of Agriculture, by competent auditors, to have the books and records of every person paying fees or taxes to the Commissioner or Department examined at least once each year to determine if such persons are keeping complete records as provided by this section, and to determine if correct reports have been made to the Commissioner or Department covering the total amount of fees or taxes due by such persons.

(c) If any person shall fail, neglect or refuse to keep such records or to make such reports or pay fees or taxes due as required, and within the time provided in this Chapter, the Commissioner shall immediately inform himself as best he may as to the matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of fees or taxes due the State from such delinquent person for the period covering the delinquency. The Commissioner shall proceed immediately to collect the fees or taxes due the State, including any penalties and interest thereon, in the manner provided in this Article. (1963, c. 458.)

§ 106-9.3. Procedure for assessment of fees and taxes. — (a) If the Commissioner of Agriculture discovers from the examination of any report filed by a taxpayer or otherwise that any fee or tax or additional fee or tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and amount of fee or tax which is due and of his intent to assess the same, which notice shall contain advice to the effect that unless application for a rehearing is made within the time specified in subsection (c), the proposed assessment will become conclusive and final.

If the Commissioner is unable to obtain from the taxpayer adequate and reliable information upon which to base such assessment, the assessment may be made upon the basis of the best information available and, subject to the provisions hereinafter made, such assessment shall be deemed correct.

(b) The notice required to be given in subsection (a) may be delivered to the taxpayer by an agent of the Commissioner or may be sent by mail to the last known address of the taxpayer and such notice will be deemed to have been received in due course of the mail unless the taxpayer shall make an affidavit to the contrary within 90 days after such notice is mailed, in which event the taxpayer shall be heard by the Commissioner in all respects as if he had made timely application.

(c) Any taxpayer who objects to a proposed assessment of fee or tax or additional fee or tax shall be entitled to a hearing before the Commissioner of Agriculture, provided application therefor is made in writing within 30 days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Commissioner of Agriculture shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount

of fee or tax or additional fee or tax due from the taxpayer as finally determined by the Commissioner shall thereupon be assessed and upon assessment shall become immediately due and collectible.

Provided, the taxpayer may request the Commissioner at any time within 30 days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Commissioner of Agriculture shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have 30 days after the receipt of the same from the Commissioner of Agriculture to apply in writing for such hearing, explaining in detail his objections to such proposed assessment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.

(d) If no timely application for a hearing is made within 30 days after notice of a proposed assessment of fee or tax or additional fee or tax is given pursuant to subsection (a), such proposed fee or tax or additional fee or tax assessment shall become final without further notice and shall be immediately due and collectible.

(e) Where a proper report has been filed by a taxpayer and in the absence of fraud, the Commissioner of Agriculture shall assess any fee or tax or additional fee or tax due from the taxpayer within three years after the date upon which such report is filed or within three years after the date upon which such report was required by law to be filed, whichever is the later. If no report has been filed, and in the absence of fraud, any fee or tax or additional fee or tax due from a taxpayer may be assessed at any time within five years after the date upon which such report was required by law to be filed. In the event a false and fraudulent report has been filed or there has been an attempt in any manner to fraudulently defeat or evade a fee or tax, any fee or tax or additional fee or tax due from the taxpayer may be assessed at any time.

(f) Except as hereinafter provided in subsection (g), the Commissioner of Agriculture shall have no authority to assess any fee or tax or additional fee or tax under this section until the notice required by subsection (a) shall have been given and the period within which an application for a hearing may be filed has expired, or if a timely application for a hearing is filed, until written notice of the Commissioner's decision has been given to the taxpayer, provided, however that if the notice required by subsection (a) shall be mailed or delivered within the limitation prescribed in subsection (e), such limitation shall be deemed to have been complied with and the proceeding may be carried forward to its conclusion.

(g) Notwithstanding any other provision of this section, the Commissioner of Agriculture shall have authority at any time within the applicable period of limitations to proceed at once to assess any fee or tax or additional fee or tax which he finds is due from a taxpayer if, in his opinion, the collection of such fee or tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State, provided, however, that if an assessment is made pursuant to the authority set forth in this subsection before the notice required by subsection (a) is given, such assessment shall not be valid unless the notice required by subsection (a) shall be given within 30 days after the date of such assessment.

(h) All assessments of fees or taxes or additional fees or taxes (exclusive of penalties assessed thereon) shall bear interest at the rate of one half of one percent (0.5%) per month or fraction thereof from the time said fees or taxes or additional fees or taxes were due to have been paid until paid. (1963, c. 458.)

§ 106-9.4. Collection of delinquent fees and taxes. — (a) If any fee or tax imposed by this Chapter, or any other fee or tax levied by the State and payable to the Commissioner of Agriculture or the Department of Agriculture, or any

portion of such fee or tax, be not paid within 30 days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Agriculture shall issue an order under his hand and official seal, directed to the sheriff of any county of the State commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Agriculture the money collected by virtue thereof within a time to be therein specified, not less than 60 days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Chapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Chapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Agriculture shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Agriculture or by any officer having authority to serve summonses. Said notice shall show:

(1) The name of the taxpayer and his address, if known;
(2) The nature and amount of the fee or tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within 10 days after service of said notice, answer the same by sending to the Commissioner of Agriculture by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee,

and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Agriculture by default or after hearing, the garnishee shall become liable for the fee or taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Agriculture or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said fees or taxes, interest, and penalties shall be those provided in this Article, as now or hereinafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within 12 months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said fees or taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars ($200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

(c) In addition to the remedy herein provided, the Commissioner of Agriculture is authorized and empowered to make a certificate setting forth the essential particulars relating to the said fee or tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the fee or tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the

superior court; said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and in personalty only from the date of the levy on such personalty and upon execution thereon no homestead or personal property exemption shall be allowed.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said fees and taxes. (1963, c. 458.)

Editor's Note. — Section 105-407, referred to in the last paragraph of subsection (b), was transferred to § 105-267.1 by Session Laws 1971, c. 806, s. 2.

§ 106-9.5. Refund of overpayment. — If the Commissioner of Agriculture discovers from the examination of any report, or otherwise, that any taxpayer has overpaid the correct amount of any fee or tax (including penalties, interest and costs, if any), such overpayment shall be refunded to the taxpayer within 60 days after it is ascertained together with interest thereon at the rate of six percent (6%) per annum: Provided, that interest on any such refund shall be computed from a date 90 days after date tax was originally paid by the taxpayer. Provided, further, that demand for such refund is made by the taxpayer within three years from the date of such overpayment or the due date of the report, whichever is later. (1963, c. 458.)

§ 106-9.6. Suits to prevent collection prohibited; payment under protest and recovery of fee or tax so paid. — No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any fee or tax imposed in this Chapter. Whenever a person shall have a valid defense to the enforcement of the collection of a fee or tax assessed or charged against him or his property, such person shall pay such fee or tax to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Agriculture; and if the same shall not be refunded within 90 days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides. (1963, c. 458.)

Part 2. Commissioner of Agriculture.

§ 106-10. Election; term; vacancy. — The Commissioner of Agriculture shall be elected at the general election for other State officers, shall be voted for on the same ballot with such officers, and his term of office shall be four years, and until his successor is elected and qualified. Any vacancy in the office of such Commissioner shall be filled by the Governor, the appointee to hold until the next regular election to the office and the qualification of his successor. (1901, c. 479, s. 4; Rev., s. 3938; C. S., s. 4675.)

§ 106-11. Salary of Commissioner of Agriculture. — The salary of the Commissioner of Agriculture shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 4; 1967, c. 1130; c. 1237, s. 4; 1969, c. 1214, s. 4; 1971, c. 912, s. 4; 1973, c. 778, s. 4; 1975, 2nd Sess., c. 983, s. 19; 1977, c. 802, s. 42.10.)

Editor's Note. — The 1975, 2nd Sess., amendment increased the salary from $31,000 to $32,544. The 1977 amendment rewrote the section.

§ 106-12. To appoint secretary and other officials. — The Commissioner of Agriculture shall appoint a secretary and prescribe his duties, and shall appoint such employees as may be necessary to the efficient prosecution of the duties of the Department of Agriculture. He shall, subject to the approval of a majority of the Board, appoint heads of divisions and their assistants. (1901, c. 479, s. 4; Rev., s. 3939; 1913, c. 202; C. S., s. 4676.)

§ 106-13. To investigate purchases, sources, and manufacture of fertilizer. — The Commissioner of Agriculture shall investigate all complaints made by purchasers of fertilizers, and render such services as he may be able in bringing about an adjustment and satisfactory settlement of such complaints. It shall be his duty to ascertain as near as may be the actual cost of blood tankage, fish scrap, nitrate of soda, cottonseed meal, and other materials from which ammonia or nitrogen is obtained; the cost of all phosphate rock, together with a description of the treatment with acids, the grinding and general manufacture of acid phosphate, and the actual cost thereof as near as may be, and to communicate with dealers, both in this country and in Germany, as to the cost of muriate of potash, kainit, and other sources of potash, and to publish the same in the Bulletin; but he shall not expose to the public the name of any manufacturer in this State who may give him information on this subject, nor shall he divulge any information concerning the private business of any corporation or company manufacturing fertilizers solely in this State: Provided, such corporation or company is not a part or branch of any trust or combination. He shall also make and publish in every fertilizer bulletin a price list of the market value of all the materials of which fertilizers are made, and revise the same as often as may be necessary. (1901, c. 479, s. 4; Rev., s. 3940; C. S., s. 4677.)

§ 106-14. To establish regulations for transportation of livestock. — The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall promulgate and enforce such rules and regulations as may be necessary for the proper transporting of livestock by motor vehicle, and may require a permit for such vehicles if it becomes necessary in order to prevent the spread of animal diseases. This section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1937, c. 427, ss. 1, 2.)

Part 3. Powers and Duties of Department and Board.

§ 106-15. Agricultural research station and branch stations. — The work of investigation in agriculture required in this Chapter may be designated by the Board of Agriculture as an agricultural research station, and the four research farms now in operation be and the same are hereby designated and established as branch research stations, to be conducted as at present under the auspices of the Board of Agriculture and out of its funds. (1907, c. 876, s. 5; C. S., s. 4682; 1955, c. 276, s. 1.)

§ 106-16. Purchase and sale of research farms; use of proceeds. — The Board of Agriculture is authorized to sell, at its discretion, any lands which the State may now own or may hereafter acquire for the purpose of conducting research farms. The Board is also authorized to purchase additional lands to be used for the purpose of conducting research farms at such place or places as in the discretion of the Board may seem expedient. No such sales or purchases shall be made except upon the approval of the Governor and Council of State upon the recommendation of the Advisory Budget Commission. (1909, c. 97; 1917, c. 45; C. S., s. 4683; 1953, c. 1337; 1955, c. 276, s. 2.)

§ 106-17. Acquisition of research farm. — The Department of Agriculture is hereby authorized and empowered to acquire by purchase, gift, donation, or lease, a tract or boundary of land of not less than 100 acres in the sand-hill section of North Carolina, and in northeastern North Carolina composed of the Counties of Camden, Chowan, Currituck, Gates, Pasquotank and Perquimans, to be developed and used as a "research farm" for the purposes of work in investigation in agriculture.

Such "research farm" when acquired and established shall be operated, managed and controlled as other "research farms" in the State. (1927, c. 182, ss. 1, 2; 1955, c. 276, s. 2.)

§ 106-18. Peanut research farm. — The Department of Agriculture is hereby authorized and directed to purchase, establish and operate a research farm in some suitable place in the peanut section of eastern North Carolina for the purpose of studying the growing of peanuts, looking toward the improvement of seed, fertilizer, the control of disease, through experiments, and such other matters pertaining to the growth and improvement of the quality of peanuts. The said research farm to be purchased and established in time for operation not later than January 1, 1938. In doing this work the Department of Agriculture is authorized to make such reasonable expenditures for establishing and operating such peanut research farm as may be necessary for its proper conduct and in the same way as is now being done for the other research farms in the State. The research farm shall be established, operated and controlled by the Department of Agriculture as the other research farms for the study of other farm crops. (1937, c. 218; 1955, c. 276, s. 2.)

§ 106-19. State Chemist; duties of office. — The Department of Agriculture shall employ an analyst or State Chemist skilled in agricultural chemistry, and such assistants as may be necessary. It shall be the duty of the State Chemist to analyze such fertilizers and products as may be required by this Department, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall also, under the direction of the Department, analyze for citizens of the State such samples of ores, minerals, mineral and potable waters, soils, marls and phosphates as may be deemed by the Department of benefit to the development of the material interest of the State, when such samples are supplied under rules by the Department, and he shall carry on such other investigations as the Department may direct. He shall make regular reports to the Department of all analyses, assays, and experiments made, which shall be furnished when deemed needful to such newspapers as will publish the same. (1901, c. 479, s. 11; Rev., s. 3941; C. S., s. 4684.)

§ 106-20. Inoculating culture for leguminous crops. — The Board of Agriculture is hereby authorized to manufacture inoculating culture for leguminous crops and distribute it to the citizens of the State applying therefor at cost, the expense of manufacture and distribution to be paid for out of the receipts of the Department of Agriculture. (Ex. Sess. 1913, c. 43; C. S., s. 4685.)

§ 106-21. Timber conditions to be investigated and reported. — The Department of Agriculture shall investigate and report upon the conditions of the timber in North Carolina, and recommend such legislation as will promote the growth thereof and preserve the same. (1901, c. 479, s. 13; Rev., s. 3942; C. S., s. 4686.)

§ 106-22. Joint duties of Commissioner and Board. — The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

(1) General. — Investigate and promote such subjects relating to the

improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration and capital as he may think proper; but he is especially charged:

(2) Commercial Fertilizers. — With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to district attorneys and to the General Assembly information as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this State, whereby the interests of the farmers may be injuriously affected, and shall publish such information in the Bulletin of the Department;

(3) Cattle and Cattle Diseases. — With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this State, or from one section of it to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person willfully violating such regulations shall be liable in a civil action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a misdemeanor;

(4) Honey and Bee Industry. — With investigations adapted to promote the improvement of the honey and bee industry in this State, and especially investigations relating to the diseases of bees, and shall publish and distribute from time to time information relative to such diseases, and such remedies therefor, and shall have power in such cases to quarantine the infected bees and to control or eradicate such infections and to regulate the transportation or importation into North Carolina from any other state or country of bees, honey, hives, or any apiary equipment, or from one section of the State to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining quarantine lines or districts. The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall have power to make rules and regulations to carry out the provisions of this section; and in event of failure to comply with any such rules and regulations, the Commissioner of Agriculture or his duly authorized agent is authorized to confiscate and destroy any infected bees and equipment and any bees and/or used apiary equipment moved in violation of these regulations;

(5) Insect Pests. — With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The willful violation of any of such regulations by any person shall be a misdemeanor;

(6) New Agricultural Industries. — With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the State, especially the culture of truck and market gardens, the grape and other fruits;

(7) Drainage and Irrigation; Fertilizer Sources. — With the investigations of the subject of drainage and irrigation and publication of information as to the best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection

and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including formulae for composting adapted to the different crops, soils, and materials;

(8) Farm Fences. — With the collection of statistics relating to the subject of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;

(9) Sales of Fertilizers, Seeds, and Food Products. — With the enforcement and supervision of the laws which are or may be enacted in this State for the sale of commercial fertilizers, seeds and food products, with the authority to make regulations concerning the same;

(10) Inducement of Capital and Immigration. — With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this State, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be offered the Department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring homeseekers in communication with landowners; and he shall publish a list of such inquiries in the Bulletin for the benefit of those who may have land for sale;

(11) Diversified Farming. — With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;

(12) Farmers' Institutes. — With the holding of farmers' institutes in the several counties of the State, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the State. He may secure such assistants as may be necessary or beneficial in holding such institutes;

(13) Publication of Bulletin. — The Commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The Department may determine the number of bulletins which shall be issued each year;

(14) Reports to Legislature. — He shall transmit to the General Assembly at each session a report of the operations of the Department with suggestions of such legislation as may be deemed needful;

(15) State Museum. — He shall keep a museum or collection to illustrate the cultural and other resources and the natural history of the State. (1901, c. 479, s. 4; Rev., ss. 3294, 3724, 3944; 1917, c. 16; C. S., s. 4688; 1939, c. 173; 1973, c. 47, s. 2.)

State Government Reorganization. — The State Museum was transferred to the Department of Agriculture by § 143A-66, enacted by Session Laws 1971, c. 864.

Constitutionality. — Legislation of this character has been upheld by well considered decisions in this and other jurisdictions. Morgan v. Stewart, 144 N.C. 424, 57 S.E. 149 (1907).

The authority to make administrative rules is not a delegation of legislative power, and such rules do not become legislation, because violations thereof are punished as "public offenses." State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

Cattle and Cattle Diseases. — The State Board of Agriculture has authority to make and enforce regulations for the quarantine of cattle and to prevent their transportation in view of preventing the spreading of contagious diseases. And an owner permitting cattle to run at large in a no-fence county who willfully allows cattle to stray across the line is guilty of a violation of the act. State v. Garner, 158 N.C. 630, 74 S.E. 458 (1912).

The third subdivision of this section confers power upon the Commissioner to make regulations prohibiting the transportation of cattle. State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

The provision to get rid of the ticks on cattle and prevent infection is a reasonable and valid regulation. State v. Hodges, 180 N.C. 751, 105 S.E. 417 (1920).

Judicial Notice of Quarantined District. — Where the quarantine regulations of the United States Department of Agriculture, relating to the transportation of cattle, which were adopted by the State Board of Agriculture, provided that no cattle originating in the quarantined district as therein described should be moved into "that part of Burke south of the Catawba River," the court judicially knows that a shipment of cattle from Burlington to Morganton has been across the line fixed as a quarantine line. State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

Cited in Coffer v. Standard Brands, Inc., 30 N.C. App. 134, 226 S.E.2d 534 (1976).

Part 4. Cooperation of Federal and State Governments in Agricultural Work.

§ 106-23. Legislative assent to Adams Act for experiment station. — Legislative assent be and the same is hereby given to the purpose of an act of Congress approved March 16, 1906, entitled "An Act to provide for an increased annual appropriation for agricultural experiment stations, and regulating the expenditure thereof," known as the Adams Act, and the money appropriated by this act be and the same is hereby accepted on the part of the State for the use of the agricultural experiment station, and the whole amount shall be used for the benefit of the said agricultural experiment station, in accordance with the act of Congress making appropriations for agricultural experiment stations and governing the expenditure thereof. (1907, c. 793; C. S., s. 4689.)

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 substituted "106-26.2" for "106-26."

Cited in Nantahala Power & Light Co. v. Clay County, 213 N.C. 698, 197 S.E. 603 (1938).

§ 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 substituted "10 acres" for "three acres" in the last sentence.

§ 106-26. Compensation for making reports; examination of report books, etc., by Department of Agriculture. — In order to encourage maximum cooperation and efficiency, the Department of Agriculture shall pay to the county commissioners of the various counties of the State from appropriations made to the Department of Agriculture, the sum of forty cents (40¢) per acceptable report received by the Department of Agriculture in accordance with the provisions of G.S. 106-24 to 106-26: Provided, however, that no such payment shall be made for any report from any township which does not cover acceptably at least ninety percent (90%) of the tracts of land within such townships. In all those cases where the report covers less than eighty percent (80%) of the tracts of land in a township, the Department of Agriculture shall withhold from the amount due the county for furnishing such reports the sum of forty cents (40¢) for each farm report shortage, and shall further deduct therefrom the sum of two dollars ($2.00) for each unauthenticated report. Upon request, all report books or forms which are not complete in accordance with the provisions of G.S. 106-24 to 106-26 shall be returned to the county board of commissioners or person charged with the duty of supervising or compiling the statistical survey information, in order that the same may be properly completed to comply with the provisions of this Part. (1921, c. 201, s. 3; C. S., s. 4689(c); 1941, c. 343; 1949, c. 1273, s. 2; 1951, c. 1014, s. 2; 1969, c. 796.)

§ 106-26.1. Cooperation of county farm and home demonstration agents and vocational teachers. — It shall be the duty of the county farm and home demonstration agents and vocational teachers to cooperate with the persons designated to obtain the information required by G.S. 106-25 and 106-26, and particularly to inform the farmers as to the advisability and necessity for obtaining the information necessary to carry out the purposes enumerated in G.S. 106-25 and 106-26. (1951, c. 1014, s. 3.)

§ 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.)

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

ARTICLE 1A.

State Farm Operations Commission.

§§ 106-26.7 to 106-26.12: Repealed by Session Laws 1977, c. 1122, s. 10.

Cross Reference. — For present provisions covering the subject matter of the repealed sections, see § 106-26.13 et seq.

ARTICLE 1B.

State Farm Operations Commission.

§ 106-26.13. Recreation of State Farm Operations Commission. — There is hereby recreated a State Farm Operations Commission (hereinafter "Commission") within the Department of Agriculture. The Commission shall consist of a member of the Board of Agriculture, appointed by the Commissioner of Agriculture; the Dean, School of Agriculture and Life Sciences, North Carolina State University; the Dean, School of Forest Resources, North Carolina State University; the Secretary of Human Resources; the Secretary of Correction; the Chairman of the Committee on Agriculture of the House of Representatives; and the Chairman of the Committee on Agriculture of the Senate; or their designees. Each member of the Commission shall be deemed serving on the Commission in an ex officio capacity and shall continue to serve until his successor has been duly qualified. (1977, c. 1122, s. 1.)

§ 106-26.14. Powers and duties of Commission. — The Commission is authorized, empowered and directed to develop policies for the use and operation of the farm units listed below:

Broughton Farm Unit (formerly Broughton Hospital Farm), Morganton
Caswell Farm Unit (formerly Caswell Center Farm), Kinston
Cherry Farm Unit (formerly Cherry Hospital Farm), Goldsboro
Dix Farm Unit (formerly Dorothea Dix Hospital Farm), Raleigh
Umstead Farm Unit (formerly John Umstead Hospital Farm), Butner
Fountain Farm Unit (formerly Richard T. Fountain School Farm), Rocky Mount

Jackson Farm Unit (formerly Stonewall Jackson School Farm), Concord
Dobbs Farm Unit (formerly Dobbs School for Girls Farm), Kinston
Old Health Farm Unit (formerly Laboratory Farm, Laboratory Section, Human Resources), between Raleigh and Cary
Samarkand Farm Unit (formerly Samarkand Manor Farm), Eagle Springs
Cameron Morrison Farm Unit (formerly Cameron Morrison School Farm), Hoffman
McCain Farm Unit (formerly McCain Sanatorium Farm), McCain
Governor Morehead Farm Unit (formerly Governor Morehead School Farm), Raleigh

The Commission shall be responsible for determining policies for operating the lands and using the resources hereby assigned to it in such a manner that the public interest is maximized. Farm production shall be conducted so as to meet the institutional needs of the State. In the interest of efficiency of operation and in times of abundance beyond anticipation, the Commission is authorized to sell farm and forest products not required for institutional needs.

The Commission shall develop policies to operate, rent, or lease the farms hereinabove named in a manner provided by law, and subject to the provisions of Chapter 146 of the General Statutes. (1977, c. 1122, s. 2.)

§ 106-26.15. Transfer of farms or timberland to Department of Agriculture. — In order to effect the intent of this Article, the Council of State may transfer to the Department of Agriculture any farm or timberland now operated by any State department or agency in the event the department or agency ceases to use the farm or timberland for its intended statutory purpose. For the purposes of this Article such lands are defined as farms, lands, and buildings that can be used for agriculture in its broadest sense, including forestry.

Upon such transfer the Commission shall assume the responsibility for the operation and general utilization of such lands. (1977, c. 1122, s. 3.)

§ 106-26.16. Powers and duties of Commissioner of Agriculture. — The Commissioner of Agriculture is authorized and directed to implement and administer the policies and programs adopted by the Commission. (1977, c. 1122, s. 4.)

§ 106-26.17. Approval of other State use or disposition of land controlled by Commission. — Any State department may apply to the Department of Administration for approval of any other State use or disposition of any land under the control of the Commission. The Commission shall present its recommendations regarding any such application. The Council of State may approve any other State use or disposition of such land as, in its judgment, may better serve the interests of the State of North Carolina. (1977, c. 1122, s. 5.)

§ 106-26.18. Disposition of proceeds from allocation or sale of such lands. — Any net proceeds realized by reason of allocation or sale of any lands under the control of the Commission shall be deposited with the State Treasurer in the general fund and shall be expended only in accordance with appropriations by the General Assembly. (1977, c. 1122, s. 6.)

§ 106-26.19. Budgetary organization. — Funds appropriated from the general fund for the operation of the farms and timberlands shall be expended in accordance with the Executive Budget Act. The Department of Agriculture shall provide all budgetary, staffing and support services. (1977, c. 1122, s. 7.)

§ 106-26.20. Use of products. — The Department of Human Resources shall have priority on those food products and services produced by the State farm operations program which are deemed essential to their institutional needs. The

value of such food products and services provided by the State farm operations program shall be based on mutually negotiated agreements between the Commission and the respective agencies. To the extent food products are available from the State farm operations program, the Department of Human Resources and other State agencies shall use such products, unless provided by other state-owned farm operations. In event of a dispute between departments, the Governor and Advisory Budget Commission shall determine the forms of such agreement and method of payment, either by cash or book transfer. (1977, c. 1122, s. 8.)

§ 106-26.21. Expenses of Commission members. — Expenses incurred by members of the Commission in the performance of those duties herein imposed shall be reimbursed, subject to statutory limitations, from the State farm operations program budget. (1977, c. 1122, s. 9.)

ARTICLE 2.

North Carolina Fertilizer Law of 1947.

§§ 106-27 to 106-50: Superseded by G.S. 106-50.1 to 106-50.22.

§§ 106-50.1 to 106-50.22: Repealed by Session Laws 1977, c. 303, s. 24.

Cross Reference. — For present statute covering the subject matter of the repealed sections, see § 106-655 et seq.

§§ 106-50.23 to 106-50.27: Reserved for future codification purposes.

ARTICLE 2A.

North Carolina Soil Additives Act of 1977.

§ 106-50.28. Short title. — This Article shall be known as the North Carolina Soil Additives Act of 1977. (1977, c. 233, s. 1.)

§ 106-50.29. Administration of Article. — This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina. (1977, c. 233, s. 2.)

§ 106-50.30. Definitions. — Words used in this Article shall be defined as follows:

(1) "Adulterated" means any soil additive:
   a. Which contains any deleterious substance in sufficient quantity to be injurious to desirable terrestrial or aquatic organisms when applied in accordance with the directions for use shown on the label; or
   b. Whose composition differs from that offered in support of registration or shown on the label; or
   c. Which contains noxious weed seed.
(2) "Bulk" means in nonpackaged form.
(3) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina or his designated agent.
(4) "Distribute" means to import, consign, offer for sale, sell, barter, exchange, or to otherwise supply soil additives to any person in this State.
(5) "Distributor" means any person who imports, consigns, sells, offers for

sale, barters, exchanges, or otherwise supplies soil additives in this State.

(6) "Label" means the display of written, printed, or graphic matter upon the immediate container of, or accompanying soil additives.

(7) "Labeling" means all written, printed, or graphic matter accompanying any soil additive and all advertisements, brochures, posters, television, radio or oral claims used in promoting its sale.

(8) "Percent" or "percentage" means the parts per hundred by weight.

(9) "Person" means individuals, partnerships, associations, corporations or other legal entity.

(10) "Product name" means the designation under which a soil additive is offered for distribution.

(11) "Registrant" means any person who registers a soil additive under the provisions of this Article.

(12) "Sale" means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditioned or otherwise for a consideration paid or to be paid, and this shall include any of said transactions whereby title or ownership is to pass and shall further mean and include any bailment, loan, lease, rental, or license to use or consume tangible personal property for a consideration paid in which possession of said property passes to the bailor, borrower, lessee, or licensee.

(13) "Sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.

(14) "Soil additive" means any substance intended for changing the characteristics of soil or other growth medium for purposes of:

a. Increasing the biological population, or
b. Increasing penetrability of water or air, or
c. Increasing water holding capacity, or
d. Increasing root development, or
e. Alleviating or decreasing soil compaction, or
f. Otherwise altering the soil or other medium in such manner that the physical and biological properties are materially enhanced.
g. The term "soil additive" does not include any substance for which nutritional claims are made, such as, but not limited to, commercial fertilizers, liming materials, or unmanipulated vegetable or animal manures. It also specifically does not include rhizobial inoculants, pine bark, peat moss, other unfortified mulches, or pesticides. (1977, c. 233, s. 3.)

§ 106-50.31. Registration of additives. — Every soil additive distributed in North Carolina shall be registered with the Commissioner by the person whose name appears on the label on forms furnished by the Commissioner. The applicant shall furnish such information as the Commissioner may require. In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the soil additive. If no specific claims are made, the Commissioner may require proof of usefulness and value of the soil additive. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that such data be developed by a recognized research or experimental institution. The Commissioner may further require that such data be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. The Commissioner may reject any data not developed under such conditions and may rely on the advice of the Director of the North Carolina Agricultural Experiment Station in evaluating data for registration.

The registration fee shall be fifty dollars ($50.00) per year for each product. Registration shall expire on December 31, annually, unless an application for renewal has been received prior to the expiration date.

The application for registration shall include the following:

(1) The name and address of the registrant;
(2) Product name;
(3) Guaranteed analysis;
   a. Active ingredients (name of each ingredient and percent)
   b. Inert ingredients (name of each ingredient and percent)
(4) Directions for use;
(5) Purpose of product.

The application shall be accompanied by the label for the product and all advertisements including brochures, posters, or other information promoting the product. The registrant is responsible for all guaranteed analysis and claims appearing on the label. (1977, c. 233, s. 4.)

§ 106-50.32. Labeling of containers. — Every soil additive container shall be labeled on the face or display side in readable and conspicuous form showing:

(1) The product name;
(2) The guaranteed analysis;
(3) A statement of claim or purpose;
(4) Adequate directions for use;
(5) Net weight or volume;
(6) Name and address of registrant. (1977, c. 233, s. 5.)

§ 106-50.33. When additive considered misbranded. — A soil additive shall be considered misbranded if:

(1) Its label or labeling is false or misleading in any particular;
(2) It is distributed under the name of another soil additive;
(3) It is represented as a soil additive or is represented to contain a soil additive unless such soil additive conforms to the soil additive definition in this Article. (1977, c. 233, s. 6.)

§ 106-50.34. Records and reports of registrants. — Each registrant shall keep accurate records of his sales, and shall file a semiannual report covering the periods January 1 through June 30, and July 1 through December 31. Such reports shall be due within 30 days from the close of each period. If the report is not filed within the 30-day period or is false in any respect, the Commissioner may revoke the registration. For the purpose of auditing reports, each registrant shall make his records available for audit from time to time as the Commissioner may deem necessary. (1977, c. 233, s. 7.)

§ 106-50.35. Violations of Article. — It shall be a violation of this Article for any person:

(1) To distribute an unregistered soil additive;
(2) To distribute an unlabeled soil additive;
(3) To distribute a misbranded soil additive;
(4) To distribute an "adulterated" soil additive;
(5) To fail to comply with a "stop sale, use or removal" order; or
(6) To fail to submit semiannual reports. (1977, c. 233, s. 8.)

§ 106-50.36. Inspection and sampling of additives. — The Commissioner is authorized to enter upon any public or private property with permission or with a proper court order during normal business hours for the purpose of inspecting or sampling any soil additive to determine if such additive is being distributed in compliance with the provisions of this Article. In the examination of such samples, the Commissioner may rely on such tests as he may establish as necessary for the enforcement of this Article. (1977, c. 233, s. 9.)

§ 106-50.37. Stop sale, etc., orders. — The Commissioner may issue and enforce a written or printed stop sale, use, or removal order to the owner or custodian of any lot of soil additive, and hold at a designated place, any such

lot of soil additive which the Commissioner determines does not comply with the provisions of this Article. When such soil additive has been made to comply with the provisions of this Article, it shall then be released in writing by the Commissioner. (1977, c. 233, s. 10.)

§ 106-50.38. Injunctions. — The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this Article or regulations adopted hereunder, in the Superior Court of Wake County, or in the superior court of the county in which such violation occurs or is about to occur. (1977, c. 233, s. 11.)

§ 106-50.39. Refusal or revocation of registration. — The Commissioner shall refuse to register any soil additive which fails to comply with the provisions of this Article, and may revoke, after opportunity for a hearing, any registration, upon sufficient evidence that the registrant or any of his designated agents has used misleading, fraudulent, or deceptive practices in the distribution of any soil additive. (1977, c. 233, s. 12.)

§ 106-50.40. Rules and regulations. — The Board of Agriculture is authorized to promulgate and adopt, pursuant to Chapter 150A of the General Statutes of North Carolina, such rules and regulations as may be necessary to enforce the provisions of this Article. Such regulations may relate to, but shall not be limited to:

(1) Methods of inspection and sampling;
(2) Examination and analysis of samples;
(3) Designation of ingredients;
(4) Identity of product;
(5) Monetary penalties for samples not meeting guarantees;
(6) Acceptable ingredients for registration;
(7) Labeling format. (1977, c. 233, s. 13.)

§ 106-50.41. Penalties. — Any person violating the provisions of this Article or the regulations adopted thereunder, shall be guilty of a misdemeanor and shall be fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) or be imprisoned for not more than 60 days, or both, in the discretion of the court. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties. (1977, c. 233, s. 14.)

ARTICLE 3.

Fertilizer Laboratories.

§ 106-51. Certification of fertilizer laboratories. — The Commissioner of Agriculture, or his authorized agent, shall, upon the application of any commercial laboratory that analyzes fertilizer or fertilizer materials, make such examination as he shall consider fit of the work of said laboratory, and when, in his opinion, the examination shall show the work of the said laboratory to be accurate and reliable, he shall certify said laboratory to that effect.

To those manufacturers requesting names of certified laboratories, the Commissioner of Agriculture shall supply such information. (1933, c. 551.)

ARTICLE 4.

Insecticides and Fungicides.

§§ 106-52 to 106-65: Repealed by Session Laws 1971, c. 832, s. 4.

Cross Reference. — For present provisions as to pesticide control, see §§ 143-434 to 143-470.

ARTICLE 4A.

Insecticide, Fungicide and Rodenticide Act of 1947.

§§ 106-65.1 to 106-65.12: Repealed by Session Laws 1971, c. 832, s. 4.

Cross Reference. — For present provisions as to pesticide control, see §§ 143-434 to 143-470.

ARTICLE 4B.

Aircraft Application of Pesticides.

§§ 106-65.13 to 106-65.21: Repealed by Session Laws 1971, c. 832, s. 4.

Cross Reference. — For present provisions as to pesticide control, see §§ 143-434 to 143-470.

ARTICLE 4C.

Structural Pest Control Act.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-65.22. Title. — This Article shall be known by the title of "Structural Pest Control Act of North Carolina of 1955." It is declared to be the policy of this State that the regulation of persons, corporations and firms engaged in the business of structural pest control in this State, as defined in G.S. 106-65.25, is in the public interest in order to ensure a high quality of workmanship and in order to prevent deception, fraud and unfair trade practices in the conduct of said business. The General Assembly finds that quality of structural pest control work is not easily determined by the general public due to the inaccessibility of the areas treated and the complexity of the methods of treatment. (1955, c. 1017; 1977, c. 231, s. 1.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 106-65.23. Structural Pest Control Division of Department of Agriculture recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum. — There is hereby recreated, within the North

Carolina Department of Agriculture, a Division thereof, to be known as the Structural Pest Control Division of said Department. The Commissioner of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner. Said Director 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. (1955, c. 1017; 1957, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7; 1973, c. 556, s. 1; 1975, c. 570, ss. 1, 2; 1977, c. 231, s. 2.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see § 116-2.

Editor's Note. — The 1975 amendment rewrote the first two paragraphs as the present first paragraph and rewrote the present fifth paragraph.

The 1977 amendment rewrote the first paragraph.

State Government Reorganization. — The Structural Pest Control Division was transferred to the Department of Agriculture by § 143A-60, enacted by Session Laws 1971, c. 864.

§ 106-65.24. Definitions. — For the purposes of this Article, the following terms, when used in the Article or the rules and regulations, or orders made pursuant thereto, shall be construed respectively to mean:

(1) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(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 pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.

(3) "Attractants" means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.

(3a) "Branch office" means and includes any place of doing business which has two or more employees engaged in the control of insect pests, rodents, or wood-destroying organisms.

(4) "Certified applicator" means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

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

(6) "Committee" means the Structural Pest Control Committee.

(7) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(8) Repealed by Session Laws 1975, c. 570, s. 4.

(8a) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture.

(9) "Employee" means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.

(9a) "Enforcement agency" means the Structural Pest Control Division of the Department of Agriculture.

(10) "Fumigants" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or

vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.

(11) "Fungi" means wood-decaying fungi.

(12) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.

(13) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(14) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(14a) The term "labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;

b. Accompanying the pesticide (or device) at any time;

c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.

(15) "Licensee" means the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this Article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.

(16) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(17) "Pest" means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.

(18) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

(19) "Registered pesticide" means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.

(20) "Repellents" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.

(21) "Restricted-use pesticide" means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.

(22) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(23) "Structural pest control" means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs,

crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.

(24) "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3; 1973, c. 556, s. 2; 1975, c. 570, ss. 3, 4; 1977, c. 231, ss. 3-5.)

Editor's Note. — The 1975 amendment substituted "'Applicant for a license'" for "'Applicant'" in subdivision (2), added subdivision (1a) and repealed subdivision (8), defining "Director."

The 1977 amendment added subdivisions (8a), (9a) and (14a).

§ 106-65.25. Phases of structural pest control; license required; exceptions. — (a) Structural pest control is divided into the following phases:

(1) Control of wood-destroying organisms by any method other than fumigation,

(2) Control of household pests by any method other than fumigation,

(3) Fumigation,

and a license is required for each such phase, and it shall be unlawful for any person, firm, corporation, association or any organization or combination thereof to engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless there shall first be secured a valid license therefor, issued by the Structural Pest Control Committee, and signed by the Commissioner of Agriculture.

(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 structural 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.

(c) Any person issued an original license after October 21, 1976, for any one or any combination of the three phases shall be deemed to be a "certified applicator" to use or supervise the use of pesticides which are classified for restricted use so long as the pesticides are being used only in the phase of structural pest control for which the person is licensed. (1955, c. 1017; 1957, c. 1243, s. 3; 1967, c. 1184, s. 4; 1973, c. 556, s. 3; 1975, c. 570, s. 5.)

Editor's Note. — The 1975 amendment rewrote subsection (b) and added subsection (b1).

§ 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. (1955, c. 1017; 1967, c. 1184, s. 5; 1973, c. 556, s. 4; 1975, c. 570, s. 6.)

Editor's Note. — The 1975 amendment rewrote this section.

§ 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 or operation of a business of a licensee hereunder, there shall be not more than a total of 90 days during any 12-month period in which any individual, firm, partnership, corporation or other entity, shall not have a qualified licensee to operate said business; and further provided, during each of the periods specified under this section, 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. A new licensee shall be responsible for correcting all discrepancies committed by the preceding licensee of said business or anyone working under his license during the 12-month period next preceding his becoming the designated licensee and he shall further be responsible for correcting discrepancies for all existing contracts. A discrepancy shall mean failure of the licensee to follow any rule and regulation concerning treating procedures adopted by the Committee under provisions of this Article.

(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. (1955, c. 1017; 1967, c. 1184, s. 6; 1973, c. 556, ss. 5, 6; 1975, c. 570, s. 7; 1977, c. 231, s. 6.)

Editor's Note. — The 1975 amendment rewrote this section.

The 1977 amendment in subsection (c) combined the former second and third sentences by adding "and further provided" to the beginning of the former third sentence, substituted "management or operation" for "management of operation," "licensee" for "license," "there shall be not more than a total of 90 days during any 12-month period in which any" for "the new owner, manager or operator (as the case may be) whether it be an," "shall not have" for "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," and "each of the periods specified under this section" for "this 90-day period" in the present second sentence, and added the present third and fourth sentences.

§ 106-65.28. Revocation or suspension of license or identification card. — (a) Any license or certified applicator's identification card or operator's identification card may be denied, 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 or operator's identification card.

(5) Willful 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 or operator'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.

(11) Falsification of records required to be kept by this Article or the rules and regulations of the Committee.

(b) Suspension of any license or certified applicator's identification card or operator'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.

(c) If a license or certified applicator's identification card or operator'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.

(d) Any licensee whose license or certified applicator or operator 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 or operator'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 operator'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.

(e) The lapsing of a State structural pest control license or certified applicator's identification card or operator's identification card by operation of law or the voluntary surrender of said license or said card shall not deprive the Committee of jurisdiction to proceed with any investigation or disciplinary proceedings against such licensee or card holder or to render a decision suspending or revoking such license or card. (1955, c. 1017; 1967, c. 1184, s. 7; 1973, c. 556, ss. 7, 8; 1975, c. 19, s. 30; c. 570, ss. 8-13; 1977, c. 231, ss. 7-9.)

Editor's Note. — The first 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 1975 Replacement Volume.

The second 1975 amendment rewrote the section so as to substitute "Commissioner" for "Director" and to add the provisions relating to certified applicators throughout the section and added subdivision (10) of subsection (a). The amendatory act directed that the new subdivision be added at the end of the section, but the intention was plainly to add it to subsection (a).

The 1977 amendment designated the last three paragraphs of former subsection (b) as subsections (c), (d) and (e), inserted "or operator's identification card" in the introductory language of subsection (a), in subdivisions (4) and (6) of subsection (a), in present subsections (b), (c), and (e), and in two places in subsection (d). The amendment also inserted "denied" in the introductory language of subsection (a), added subdivision (11) to subsection (a), inserted "or operator" near the beginning of subsection (d), and substituted "said license or said card" for "a license by a licensee or certified applicator's identification card by a certified applicator," "or card holder" for "or certified applicator," and "license or card" for "license or certified applicator's identification card" in subsection (e).

§ 106-65.29. Rules and regulations. — In order to ensure that persons licensed and certified under this Article are capable of performing a high quality of workmanship, the Committee is hereby authorized and empowered to make rules and regulations with respect to:

(1) The amount and kind of training required of an applicant for a license and certified applicator's card to engage in any one or more of the three phases of structural pest control.

(2) The type, frequency and passing score of any examination given an applicant for a license and certified applicator's card under this Article.

(3) The amount, kind and frequency of continuing education required of a licensee and certified applicator.

(4) The methods and materials to be used in performing any work authorized by the issuance of a license and certified applicator's card under this Article.

(5) The business records to be made and maintained by licensees and certified applicators under this Article necessary for the Committee to determine whether the licensee and certified applicator is performing a high quality of workmanship.

(6) The credentials and identification required of licensees and certified applicators, their employees and equipment, including service vehicles, when engaged in any work defined under this Article.

(7) Safety methods and procedures for structural pest control work.

Such rules and regulations shall not become effective until a public hearing shall have been held and notification of such hearing shall have been given to all licensees and certified applicators. (1955, c. 1017; 1967, c. 1184, s. 8; 1975, c. 570, s. 14; 1977, c. 231, s. 9.)

Editor's Note. — The 1975 amendment added "and certified applicators" at the end of the section.

The 1977 amendment rewrote this section.

§ 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.

The Commissioner shall have authority to appoint personnel of the Structural Pest Control Division as special inspectors and said special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have

reasonable grounds to believe that a violation of this Article is being committed in their presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any person holding a valid structural pest control license, or a certified applicator's identification card, or an operator's identification card as issued under the provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively. (1955, c. 1017; 1967, c. 1184, s. 9; 1973, c. 556, s. 9; 1975, c. 570, s. 15; 1977, c. 231, s. 10.)

Editor's Note. — The 1975 amendment rewrote this section. The 1977 amendment added the third paragraph.

§ 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.

(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, plead 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. (1955, c. 1017; 1957, c. 1243, s. 4; 1967, c. 1184, s. 10; 1973, c. 47, s. 2; c. 556, s. 10; 1975, c. 570, s. 16.)

Editor's Note. — The 1975 amendment rewrote this section.

§ 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 150A of the General Statutes. (1955, c. 1017; 1957, c. 1243, s. 5; 1967, c. 1184, s. 11; 1973, c. 556, s. 11; 1975, c. 570, s. 17.)

Editor's Note. — The 1975 amendment inserted "or certified applicator's identification card" near the end of the fifth sentence of the first paragraph and inserted "or certified applicator's identification card" and "or certified applicator" in the last paragraph.

§ 106-65.33. Violation of Article, falsification of records, or misuse of registered pesticide a misdemeanor. — Any person who shall be adjudged to have violated any provision of this Article or who falsifies any records required to be kept by this Article or by the rules and regulations pursuant to this Article or who uses a registered pesticide in a manner inconsistent with its labeling shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred dollars ($100.00) or not more than one thousand dollars ($1,000) or shall be imprisoned for not less than 60 days nor more than six months, or both. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Committee, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties. (1955, c. 1017; 1957, c. 1243, s. 6; 1967, c. 1184, s. 12; 1977, c. 231, s. 11.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 106-65.34: Repealed by Session Laws 1967, c. 1184, s. 13.

§ 106-65.35: Repealed by Session Laws 1973, c. 556, s. 12.

§ 106-65.36. Reciprocity; intergovernmental cooperation. — The Committee may cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article. (1973, c. 556, s. 13.)

§ 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.)

§ 106-65.38. Disposition of fees and charges. — All fees and charges received by the Division under this Article shall be deposited in the Department of Agriculture General Fund Budget for the purpose of administration and enforcement of this Article, with proper approved accounting procedures accounting for all expenditures and receipts. (1977, c. 231, s. 12.)

§ 106-65.39. Jurisdiction of superior court. — The superior court is vested with jurisdiction specifically to enforce and to prevent and restrain violations of this Article and shall have jurisdiction in all other cases arising under this Article. (1977, c. 231, s. 13.)

§§ 106-65.40, 106-65.41: Reserved for future codification purposes.

ARTICLE 4D.

North Carolina Biological Organism Act.

§ 106-65.42. Short title. — This Article shall be known as the "North Carolina Biological Organism Act." (1973, c. 713, s. 2.)

§ 106-65.43. Purpose. — The purpose of this Article is to regulate the production, sale, use and distribution of biological organisms that may have an adverse effect on the environment. (1973, c. 713, s. 1.)

§ 106-65.44. Definitions. — For the purposes of this Article, unless the context clearly requires otherwise:

(1) The term "biological organism" means any plant, lower animal, virus or disease causal agent intended for release into the environment; or, an organism which affects the environment by its presence or absence.
(2) The term "Board" means North Carolina Board of Agriculture.
(3) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
(4) The term "Division of Entomology" means the Division of the Department of Agriculture so named. (1973, c. 713, s. 3.)

§ 106-65.45. Authority of the Board to adopt regulations. — The Board of Agriculture is hereby authorized to adopt regulations to implement and carry out the purposes of this Article so as to protect the environment from detrimental importation, rearing, sale, and/or release of insects, parasites, predators and other biological organisms in North Carolina, and to protect organisms that are beneficial to man and/or his environment. No viable biological organism shall be brought into North Carolina, reared, collected, propagated or offered for sale or released except under such conditions as are prescribed by regulations adopted under the provisions of this Article. (1973, c. 713, s. 4.)

§ 106-65.46. Commissioner of Agriculture to enforce Article; further authority of Board. — It shall be the duty of the Commissioner to exercise the

powers and duties imposed upon him by this Article and such regulations as shall be adopted under these provisions for the purpose of protecting the environment from adverse effects of biological organisms released into the environment of North Carolina and to protect beneficial biological organisms in the State. The Board is hereby authorized to cause importation, collection, release, destruction and propagation of beneficial organisms when such action is deemed to be in the best interest of North Carolina and its environment. The Board is authorized to promote and/or regulate businesses, persons or agencies engaged in the importation, collection, rearing, sales, release, or use of biological organisms. The Board is authorized to establish standards of positive identification, purity of culture or colony, freedom from disease and hyperparasites of biological organisms and to establish standards of competence and responsibility for the private practitioner engaged in the propagation, use, distribution, release or sale of biological organisms.

The Commissioner is hereby authorized to cause or cooperate in management or mitigation programs to be conducted against such plant, environmental, or nuisance pests as can be controlled in an economically, ecologically, and biologically sound manner. The Board is authorized to cause use of pesticides, parasites, predators, pheromones, genetic material, and other control techniques which are consistent with the pesticide, environmental and other laws applicable in the State of North Carolina.

The Commissioner shall have authority to designate such employees of the North Carolina Department of Agriculture and/or to enter into cooperative agreements with other governmental agencies as may be needed to carry out the duties and exercise the powers provided by this Article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner as agents for the purpose of this Article. (1973, c. 713, s. 5.)

§ 106-65.47. Authority under other statutes not abrogated; memoranda of understanding. — The provisions of this Article shall in no way abrogate the authority as defined in other Articles of the General Statutes of the State of North Carolina as previously enacted. The Commissioner is hereby authorized to enter into memoranda of understanding with other State and federal agencies and individuals concerning biological organisms or pest mitigation programs when such action is desirable to ensure cooperation and prevent conflicts of interest. (1973, c. 713, s. 6.)

§ 106-65.48. Criminal penalties; violation of law or regulations. — If anyone shall interfere with or attempt to interfere with the Commissioner or any of his agents, while engaged in the performance of his duties under this Article, or shall violate any provision of this Article or any regulation of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250.00), or imprisoned for not less than 10 nor more than 30 days, for each offense. Each day's violation shall constitute a separate offense. (1973, c. 713, s. 7.)

§ 106-65.49. Article not applicable in certain cases. — The provisions of this Article and/or regulations promulgated hereunder shall not apply to:

(1) Any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license issued pursuant to section 351 of the Public Health Service Act (42 U.S.C. section 262) and regulations promulgated thereunder;

(2) Any finished virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or other biological product shipped prior to licensing for development or investigational purposes

in compliance with the requirements of the Federal Food, Drug and Cosmetic Act (21 U.S.C. section 301 et seq.) or the Animal Virus, Serum, and Toxin Law of March 4, 1913 (37 Stat. 832; 21 U.S.C. section 151 et seq.), and rules and regulations promulgated thereunder; and

(3) Any etiological agent shipped in accordance with regulations promulgated under section 361 of the Public Health Service Act (42 U.S.C. section 264). (1973, c. 1091.)

§§ 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 or 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 account 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.)

§ 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.)

§ 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. The Commissioner is also authorized to promulgate regulations governing the movement of regulated articles from other states or portions thereof into this State when such state is known to be infested with 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; 1977, c. 507, s. 1.)

Editor's Note. — The 1977 amendment added the present second sentence.

§ 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 promulgate reasonable regulations regarding areas where cotton cannot be planted within an elimination zone when he has reason to believe it will jeopardize the success of the program or present a hazard to public health or safety. 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. The Commissioner is authorized to set by regulation a reasonable schedule of penalty fees to be assessed when growers in designated "elimination zones" do not meet the requirements of (G.S. 106-65.73) and participation in cost sharing as prescribed by regulation. Such penalty fees shall not exceed a charge of twenty-five dollars ($25.00) per acre. When a grower fails to meet the requirements of regulations promulgated by the Commissioner, the Commissioner shall have authority in elimination zones to destroy cotton not in compliance with such regulations. (1975, c. 958, s. 8; 1977, c. 507, ss. 2, 3.)

Editor's Note. — The 1977 amendment added the present second, and fifth through seventh sentences.

§ 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 and to establish procedures for the purchase and destruction of commercial 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 or the regulations adopted pursuant thereto. 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; 1977, c. 507, ss. 4, 5.)

Editor's Note. — The 1977 amendment inserted "and to establish procedures for the purchase and destruction of commercial cotton" in the first sentence and added "or the regulations adopted pursuant thereto" to the end of the second sentence.

§ 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 5.

Seed Cotton and Peanuts.

§ 106-66. Sale of seed cotton or peanuts. — If any person shall buy, sell, deliver or receive for a price, or for any reward whatever, any cotton in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose, and to be open to inspection by the public at all business hours, the date of such buying or receiving, the number of pounds in each lot, the true name of the person or persons from whom bought or received and that he is the owner thereof, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. In all prosecutions under this section it shall only be necessary for the State to allege and prove that the defendant bought or received the seed cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with. (1887, c. 199; 1905, cc. 201, 523; Rev., s. 3812; C. S., s. 5083; 1929, c. 281, s. 1.)

Constitutionality. — As to constitutionality of statute similar to this section, see State v. Moore, 104 N.C. 714, 10 S.E. 143 (1889).

§ 106-67. Traveling seed cotton buyers must report; failure a misdemeanor. — Any person engaged in traveling from house to house or from place to place buying or trading for seed cotton shall keep a correct record of the name and post-office address of each person from whom he buys or with whom he trades for seed cotton, together with the number of pounds he buys or trades for from each person and the amount paid in each case.

On or before the third day of each month such person shall file a sworn statement with the clerk of the superior court of the county in which he made such purchases or trades for seed cotton, showing the name and post-office address of each person from whom he bought or with whom he traded during the next preceding month, together with the amount paid and the number of pounds of such cotton received from each person.

Any person failing or refusing to comply with this section shall be guilty of a misdemeanor for each offense, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days. (1919, c. 43; C. S., s. 5084.)

ARTICLE 5A.

Marketing of Farmers Stock Peanuts.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-67.1. Purpose of Article.—The purpose of this Article is to promote fair trade practices among growers, handlers and buyers in the selling and buying of farmers stock peanuts, so as to ensure fair grading, weighing, labeling, inspecting and computing of purchase price. (1957, c. 1053, s. 1.)

§ 106-67.2. Licenses to buy peanuts required; purchases for seed excepted. — Each person, firm or corporation that buys one ton or more of farmers stock peanuts from producers for his account or the account of others during any calendar year shall obtain a license from the Commissioner of Agriculture each year to conduct such business. This Article shall not apply to purchasers who buy peanuts for seed purposes only. (1957, c. 1053, s. 2.)

§ 106-67.3. Issuance of license; fee; effective period; use of fees collected. — (a) The Commissioner of Agriculture shall issue a license to any person, firm or corporation desiring to buy farmers stock peanuts upon the receipt of a prescribed application accompanied by a ten dollar ($10.00) license fee; provided, however, that the Commissioner may withhold the issuance of a license to any applicant who has been convicted of violating any provision of this Article until the Commissioner has been given reasonable assurance that the applicant will comply with the provisions of this Article and the rules and regulations adopted pursuant thereto.

(b) The effective period of the license shall be from July 1 through June 30 of each year.

(c) The moneys collected for license fees shall be used only for the administration and enforcement of the provisions of this Article. (1957, c. 1053, s. 2.)

§ 106-67.4. Advisory Committee. — The Commissioner of Agriculture shall appoint an Advisory Committee consisting of five members: two members to represent North Carolina peanut growers, at least one of whom shall represent the membership of the North Carolina Peanut Growers' Association; one member to represent the Cooperative Marketing Association serving the peanut growers of North Carolina; one member to represent the North Carolina peanut commission buyers; and one member to represent the peanut millers and shellers of North Carolina. The term of office of each member shall commence on July 1 of each year, or as soon thereafter as he is appointed and continue to the following June 30.

The duties of this Committee shall be to act in an advisory capacity to the Commissioner of Agriculture and the North Carolina State Board of Agriculture in formulating rules and regulations and in other matters relating to the administration of this Article. (1957, c. 1053, s. 3.)

§ 106-67.5. False certificates, etc.; false representations. — It shall be unlawful for any person, firm or corporation knowingly to falsely make, issue, alter, forge or counterfeit any official certificate, memorandum, or falsely represent the weight, grade, class, quantity or condition or to knowingly represent that the peanuts have been officially inspected or graded (by an authorized government inspector or grader) when such product in fact has not been so graded or inspected. (1957, c. 1053, s. 4.)

§ 106-67.6. Inspections and investigations by Commissioner. — In order to carry out the purposes of this Article effectively, the Commissioner of Agriculture is authorized to inspect or investigate transactions for the sale or delivery of farmers stock peanuts to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage and other facilities and articles connected with the business of handlers of farmers stock peanuts. (1957, c. 1053, s. 5.)

§ 106-67.7. Rules and regulations. — The North Carolina State Board of Agriculture is hereby authorized to adopt such reasonable rules and regulations as may be necessary for the proper administration and enforcement of this Article. (1957, c. 1053, s. 6.)

Cited in Coffer v. Standard Brands, Inc., 30 N.C. App. 134, 226 S.E.2d 534 (1976).

§ 106-67.8. Penalty; suspension of license. — Any person, firm or corporation violating any provision of this Article, or any regulation adopted pursuant to this Article, shall be guilty of a simple misdemeanor punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days, in the discretion of the court.

The Commissioner of Agriculture is hereby authorized to suspend the license of any person, firm or corporation, upon being convicted of violating any provision of this Article, for any period of the remaining part of the licensed year within his discretion. (1957, c. 1053, s. 7.)

ARTICLE 6.

Cottonseed Meal.

§ 106-68. Cottonseed meal defined; inspection tax. — Cottonseed meal is a product of the cottonseed only, composed principally of the kernel with such portion of the fiber or hull and oil as may be left in the course of manufacture

of cottonseed oil, and when sold for use as fertilizer or feed shall be subject to an inspection tax of twenty-five cents (25¢) per ton and be subject to inspection as other fertilizers or fertilizing materials, unless sold to manufacturers for use in manufacturing fertilizers or feed. (1917, c. 242, s. 1; C. S., s. 4704; 1939, c. 286.)

§ 106-69. Bags to be branded with specified particulars. — All cottonseed meal offered for sale, unless sold to manufacturers for use in manufacturing fertilizers or feed, shall have plainly branded on the bag containing it, or on the tag attached thereto, the following data:

(1) Cottonseed meal (with brand and grade).
(2) Weight of package.
(3) Ammonia and protein.
(4) Name and address of manufacturer. (1917, c. 242, s. 2; C. S., s. 4705.)

§ 106-70. Grades and standards established. — No person, firm, or corporation shall offer for sale any cottonseed meal except as provided in G.S. 106-69, graded and classed as follows:

(1) Prime cottonseed meal by analysis must contain at least seven and one-half percent (7½%) of ammonia or thirty-eight and fifty-six one-hundredths percent (38.56%) of protein.
(2) Good cottonseed meal by analysis must contain at least seven percent (7%) of ammonia, or thirty-six and no one-hundredths percent (36%) of protein.
(3) Ordinary cottonseed meal by analysis must contain at least six and one-half percent (6.5%) of ammonia, or thirty-three and forty-four hundredths percent (33.44%) of protein. (1917, c. 242, s. 3; C. S., s. 4706.)

Purpose. — The purpose of this Article is to promote agriculture by insuring the sale of fertilizers containing plant food in certain proportions and of sufficient quality and quantity and to protect those who cultivate the soil from imposition and fraud. State v. Faulkner, 175 N.C. 787, 95 S.E. 171 (1918).

§ 106-71. Rules to enforce statute; misdemeanor. — The Board of Agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this Article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person willfully violating any of the regulations made by the Board of Agriculture in connection with the provisions of this Article shall be guilty of a misdemeanor. (1917, c. 242, s. 4; C. S., s. 4707.)

§ 106-72. Sales without tag; misuse of tag; penalty; forfeiture. — Every merchant, trader, manufacturer, or agent who shall sell or offer for sale any cottonseed meal without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any cottonseed meal, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, offered for sale, or removed, to be recovered by the Commissioner of Agriculture by suit brought in the name of the State, and any amount so recovered shall be paid one half to the informant and one half to the State Treasurer for the use of the Department of Agriculture. If any such cottonseed meal shall be condemned, as provided by law, it shall be the duty of the Department to have an analysis made of the same; cause printed tags or labels expressing the proper grade to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold; and it shall be unlawful for any person to sell, offer for sale, or remove any such cottonseed meal, or for any agent of any railroad or other trans-

portation company to deliver any such cottonseed meal in violation of this section. (1917, c. 242, s. 4; C. S., s. 4708.)

Penalty Not Applicable to Purchaser. — In construing a former statute of similar import, it was held that the penalty applies to the manufacturer or anyone, either as principal or agent, who sells or offers to sell, or removes the fertilizer, and the word "remove" does not apply to the purchaser who receives the fertilizer not for sale, but for use, and when the only removal by him is taking the fertilizer from the railroad station and then distributing the same under his crops. Johnson v. Carson, 161 N.C. 371, 77 S.E. 307 (1913).

§ 106-73. Sales contrary to Article a misdemeanor.—Any person, firm, or corporation who shall sell or offer for sale or shall act as agent of or broker for the manufacturer of or dealer in any cottonseed meal contrary to the provisions above set forth shall be guilty of a misdemeanor. (Rev., s. 3814; 1917, c. 242, s. 5; 1919, c. 13, s. 2; C. S., s. 4709.)

Liability. — The fact that neither knowledge of the defect nor intent to defraud is made an element in the criminal offense is strong reason for confining the statute to the manufacturer, who should be held to have knowledge of the composition of the fertilizer he offers for sale, and to the owner, not a manufacturer, and his agent with authority to sell, who have the opportunity to test the fertilizer before they sell it. State v. Faulkner, 175 N.C. 787, 95 S.E. 171 (1918).

Applied in State v. Southern Cotton Oil Co., 154 N.C. 635, 70 S.E. 741 (1911).

§ 106-74. Forfeiture for unauthorized sale; release from forfeiture. — All cottonseed meal sold or offered for sale contrary to the provisions above set forth shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture. The net proceeds from such sale shall be placed in the general fund of the Department and accounted for upon its books. The Commissioner, however, shall have the discretion to release the meal so seized and condemned upon compliance with the law as set forth above and the payment of all costs and expenses incurred by the Department in any proceedings connected therewith. (1917, c. 242, s. 5; C. S., s. 4710.)

§ 106-75. Method of seizure and sale on forfeiture. — Such seizure and sale shall be made under the direction of the Commissioner of Agriculture by an officer or agent of the Department; the sale to be made at the courthouse door in the county in which the seizure is made, after 30 days advertisement in some newspaper published in said county, or if no newspaper is published in said county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the grade of the meal, the quantity, why seized and offered for sale. (1917, c. 242, s. 5; C. S., s. 4711.)

§ 106-76. Collection and analysis of samples. — The Department of Agriculture shall have the same authority and powers for taking and analyzing samples of cottonseed meal as are provided in case of commercial fertilizers and fertilizer materials; and the same procedure as to law and regulations shall be followed in taking such samples of cottonseed meals as are prescribed and followed for taking samples of fertilizer and fertilizer materials. (1919, c. 271; C. S., s. 4712.)

§ 106-77. Sales below guaranteed quality; duties of Commissioner. — When the Commissioner of Agriculture shall be satisfied that any cottonseed meal is five percent (5%) below the guaranteed analysis, it shall be his duty to assess twice the value of said deficiency against the manufacturer, and if said cottonseed meal shall fall as much as ten percent (10%) below the guaranteed analysis it shall be his duty to assess three times the value of said meal and

require that his findings of said deficiency be made good to all persons who, in the opinion of the Commissioner, have purchased the said meal; and the Commissioner may seize any meal belonging to said company, to the value of the deficiency, if the deficiency shall not be paid within 30 days after notice to the company. If the Commissioner shall be satisfied that the deficiency in analysis was due to intention or fraud of the manufacturer, then the Commissioner shall assess and collect from the manufacturer twice the amount above provided for and pay over the same to parties who purchased said meal. If any manufacturer shall resist such collection or payment, the Commissioner shall immediately publish the analysis and the facts in the Bulletin and in such newspapers in the State as he may deem necessary. (1917, c. 242, s. 7; C. S., s. 4713.)

§ 106-78. Adulteration prohibited. — It shall be unlawful for any manufacturer to adulterate cottonseed meal in the process of manufacture or otherwise. (1917, c. 242, s. 8; C. S., s. 4714.)

ARTICLE 7.

Pulverized Limestone and Marl.

§ 106-79. Board of Agriculture authorized to make and sell lime to farmers. — The North Carolina Board of Agriculture is authorized and directed, for the purpose of furnishing marl or limestone to the farmers of the State, to make such arrangements as they deem advisable for this purpose, and to this end may lease or purchase oyster shells in large quantities and beds of limestone, and erect machinery suitable for the preparation of the material for use by the farmers; and any lime so prepared and any by-products shall be sold for agricultural purposes to the citizens of the State at a reasonable cost which shall produce an amount of money sufficient to maintain and operate the plant. (1919, c. 182, s. 1; C. S., s. 4715.)

§ 106-80. Convict labor authorized. — With the approval of the Governor, when requested by the Board of Agriculture, the chairman of the Board of Transportation may furnish a superintendent with a squad of able-bodied convicts, not to exceed 50, to do such work as the Commissioner, with the authority of the Board, may deem necessary to mine, prepare, load and dispose of the material. The Board shall pay the State quarterly such amount as shall be agreed upon by the chairman of the Board of Transportation and the Board of Agriculture for their work, out of the proceeds of the sales, and the State shall guard, feed, clothe, and work such convicts: Provided, that after the first year's operations the expenses of the work shall not exceed the amount of the sales. (1919, c. 182, s. 2; C. S., s. 4716; 1933, c. 172, s. 18; 1957, c. 65, s. 11; 1973, c. 507, s. 5.)

ARTICLE 8.

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

§ 106-81. Regulation of sale, etc., of agricultural liming material, etc. — All agricultural liming material, agricultural liming material with potash, and land plaster, hereinafter named either as the aforesaid separate items, or collectively as "materials coming under this Article," or as "said materials," to be sold, offered, or exposed for sale in this State, shall be subject to regulation as provided by the following sections of this Article. (1941, c. 275, s. 1.)

§ 106-82. Registration of brands by manufacturers and vendors. — Every

manufacturer or vendor proposing to sell, offer or expose for sale in this State, the materials coming under this Article shall, annually on or before the first day of January of each year, or before offering said materials for sale in this State, register with the Commissioner of Agriculture, on forms to be furnished by said Commissioner, each brand of the said materials that he proposes to offer for sale during the next ensuing calendar year, or remainder thereof, giving for each brand the information prescribed in the following subdivisions:

(1) Net weight when sold in packages.

(2) A brand or trade name truly descriptive of the product.

(3) The guaranteed analysis showing:

a. In case of agricultural liming materials, the minimum percent of calcium expressed as calcium carbonate ($CaCO_3$) and of magnesium expressed as magnesium carbonate ($MgCO_3$) if the product be unburned or a mixture of both burned and unburned material; or as calcium oxide (CaO) and magnesium oxide (MgO) if the product be in the burned state and, in either case, the total neutralizing value expressed as calcium carbonate equivalent or neutralizing equivalent, and the fineness of the material, excepting that guarantee of screen analysis shall not be required for the products from completely burned limestone or shells. (The terms "calcium carbonate equivalent" and "neutralizing equivalent," for the purpose of this Article, shall mean one and the same thing. Fineness shall be determined by screens complying with the specifications of the United States Bureau of Standards.)

b. In case of agricultural liming material with potash, the same requirement as for agricultural liming material, subdivision (3)a of this section, but including also the minimum percent of available potash as the oxide (K_2O). (The potash content of agricultural liming material with potash shall not be below four percent (4%), and the guarantee for said potash content shall be in whole numbers only.)

c. In case of land plaster, the minimum percent of calcium sulfate ($CaSO_4$).

(4) The name and address of the manufacturer or vendor guaranteeing the registration.

(5) In case of combinations of materials from different sources, the source, chemical form, and minimum percent of each material in truly descriptive terms. (1941, c. 275, s. 2.)

§ 106-83. Labeling. — All of the said materials sold, offered, or exposed for sale in this State shall have attached thereto, or be accompanied by a plainly printed statement giving the information as required under G.S. 106-82, subdivisions (1), (2), (3), (4) and (5). In case of materials sold in packages, the said information shall be plainly printed upon the package, or upon a tag or label attached thereto, of such quality and in such manner that it shall withstand normal handling, and, in case of material sold in bulk, the said statement shall be delivered to the purchaser either with the material, or with the invoice therefor. (1941, c. 275, s. 3.)

§ 106-84. Registration and tonnage fees; tags showing payment; reporting system; license certificates. — (a) For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this Article, there shall be paid, by the manufacturers or vendors, to the Department of Agriculture, for each brand or grade of said materials registered as required under G.S. 106-82, an annual registration fee of five dollars ($5.00) for each calendar year or part thereof, said fee to be paid at the time of registration.

(b) Likewise, in addition to the above stated registration fee there shall be paid upon said materials sold in this State, in the manner specified under subsection (c) of this section, tonnage fees as follows: For agricultural liming material, five cents (5¢) per ton; for agricultural liming material with potash, twenty-five cents (25¢) per ton; and for land plaster, five cents (5¢) per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose of use in the manufacture of fertilizer.

(c) Each bag, parcel, or shipment of said materials shall have attached thereto a tag, or label, to be furnished by the Department of Agriculture, stating that all charges specified in this Article have been paid, and the Commissioner of Agriculture, with the advice and consent of the Board of Agriculture is hereby empowered to prescribe a form for such tags, or labels, and to adopt such regulations as will insure enforcement of this Article. Whenever any manufacturer or vendor shall have paid the required charges, his goods shall not be liable to any further tax, whether by city, town or county. Tax tags or labels shall be issued each year by the Commissioner of Agriculture, and sold to persons applying for same at the tax rate provided herein. Tags or labels left in the possession of persons registering the materials coming under this Article, at the end of a calendar year, may be exchanged for tags or labels for the next succeeding year.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this Article in this State may make application for a permit to report the materials sold and pay the tonnage fees as set forth in subsection (b) of this section, as the basis of said report, in lieu of affixing inspection tags or labels. The Commissioner of Agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and as are satisfactory to the Commissioner of Agriculture, and granting the Commissioner, or his duly authorized representative, permission to examine such records and verify the statement. The report shall be quarterly and the tonnage fees shall be due and payable quarterly, on or before the tenth day of January, April, July, and October of each year, covering the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be under oath and on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the tenth day following the date due or if the report be false, the Commissioner may revoke the permit, and if the tonnage fees be unpaid after a 15-day grace period, the amount shall bear a penalty of ten percent (10%) which shall be added to the tonnage fees due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of two hundred fifty dollars ($250.00) or securities acceptable to the Commissioner of a value of at least two hundred fifty dollars ($250.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance.

(d) To manufacturers or vendors of the materials covered in this Article, who have registered their brands of the said materials and paid registration fees as required herein, shall be issued by the Commissioner of Agriculture, without further charge, certificates licensing said manufacturers or vendors, themselves or through their agents, to sell in this State the brands of materials named in said certificate, for the period of time designated therein. (1941, c. 275, s. 4; 1949, c. 828.)

§ 106-85. Report of sales. — In addition to the statement required under G.S. 106-82, each manufacturer or vendor of the materials covered in this Article shall, on or before the first day of February of each year, file with the Department of Agriculture a written report showing the total number of net tons of each brand and grade of the said materials sold by him, or his representatives or agents in this State, during the last preceding year. License for the sale of said materials within this State shall not be issued for a succeeding year to any manufacturer or vendor for the continued sale of his product unless and until said report has been made. (1941, c. 275, s. 5.)

§ 106-86. Administration; inspections, sampling and analysis. — It shall be the duty of the Commissioner of Agriculture to institute the necessary proceedings and have prepared the necessary equipment to put into effect the provisions of this Article, and to authorize the collecting of official samples of the materials covered by it, to have them analyzed, and to have results published for the information of the public. For this purpose such inspectors or representatives as he may duly authorize shall have full access, ingress and egress to and from all places of business, manufacture, storage, transportation, handling or sale of any of the said materials. They shall also have power to open any container or package containing or supposed to contain any of the said materials, and to take therefrom samples for analysis. The official methods and recommendations of the Association of Official Agricultural Chemists as to sampling and analyzing shall be used in administering this Article. (1941, c. 275, s. 6.)

§ 106-87. Deficiencies; refunds to consumers. — Should any of the materials coming under this Article be found, by procedures authorized thereunder, to be deficient in the constituents as claimed by the manufacturer or vendor thereof, said manufacturer or vendor, upon being officially notified of such deficiency by the Commissioner of Agriculture, shall, within 90 days following such notification, make refunds to the consumers of the deficient materials as follows: In case of "agricultural liming material" or "agricultural liming material with potash," excepting potash deficiency of the latter, if the deficiency be five percent (5%) or more, there shall be refunded an amount equal to three times the value of such deficiency. In case of "potash" deficiency in "agricultural liming material with potash," there shall be refunded an amount equal to three times the value of the deficiency, if such deficiency is in excess of 40 points (which shall mean 0.40 of one percent) on goods guaranteed four percent (4%); 50 points (which shall mean 0.50 of one percent) on goods that are guaranteed five percent (5%) up to and including eight percent (8%); and 60 points (which shall mean 0.60 of one percent) on goods guaranteed nine percent (9%) and up to and including twenty percent (20%); and 100 points (which shall mean 1.00 percent) on goods guaranteed over twenty percent (20%); and in case of land plaster, for deficiencies in excess of one percent (1%), there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of Agriculture for deposit with the State Treasurer to the credit of the Department of Agriculture, where said refund shall be held for payment to the proper consumer upon order of said Commissioner. Where the consumer to whom the refund is due cannot be found within a period of two years, such refund shall, after said period, revert to the Department of Agriculture for expenditure by said Commissioner in promoting the agricultural program of the State. (1941, c. 275, s. 7.)

§ 106-88. Violations and penalties. — Any person or persons selling, offering or exposing for sale in this State any of the materials covered in this Article, without first having registered said materials, paid the fees required,

secured the required license, and otherwise complied with the requirements of this Article; or who shall have caused to be submitted, or to be associated with said registrations or materials, false, fraudulent, or misleading statements; or who shall have caused to be incorporated into said materials any substances which shall be harmful to plants or plant growth; shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for the first offense and not less than one hundred dollars ($100.00) for each subsequent offense. (1941, c. 275, s. 8.)

§ 106-89. Certified analysis as evidence. — In the trial of any suit or action wherein there is called in question the value of composition of any of the materials covered by this Article, a certified statement of the analysis made by the chemists of the Department of Agriculture shall be admissible as prima facie evidence of the content, value, or composition of said materials. (1941, c. 275, s. 9.)

Cited in In re Arthur, 291 N.C. 640, 231 S.E.2d 614 (1977).

§ 106-90. Revocation of licenses; seizure of materials. — The Commissioner of Agriculture is hereby authorized to revoke any license and require forfeit of fees paid under such license when it is ascertained that the registration upon which said license was issued has given false information in its statement relative to the kind, quality, composition or fineness of the materials sold, or offered for sale, under the provisions of this Article; and to seize and withhold from sale or distribution any such materials where it is shown that they are being dispensed in violation of said Article. (1941, c. 275, s. 10.)

§ 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.

§ 106-92. Construction of Article. — Nothing in this Article shall be construed to restrict or avoid sales or exchanges of the materials coming under this Article to each other by importers, manufacturers or manipulators who mix said materials for sale, or as preventing the free and unrestricted shipments of said materials to manufacturers or manipulators who have registered their brands as required by the provisions of this Article. (1941, c. 275, s. 12.)

ARTICLE 9.

Commercial Feedingstuffs.

§§ 106-93 to 106-110: Repealed by Session Laws 1973, c. 771, s. 19.

Cross References. — For present provisions covering the subject matter of the repealed sections, see §§ 106-284.30 through 106-284.46. As to the effect of the repeal upon existing rules and regulations of the Department of Agriculture and other State agencies, see note to § 106-284.30.

ARTICLE 10.

Mixed Feed Oats.

§ 106-111. Unlawful to sell mixed feed oats unless ground. — It shall be unlawful for any person, firm, or corporation to sell, or offer or expose for sale or distribution within the State, the feeding material known as "mixed feed oats" unless it first be ground. The duty of enforcing this section and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. The Department of Agriculture shall adopt such rules and regulations as may be necessary for the efficient enforcement of this section. Every violation of the provisions of this section shall be deemed a misdemeanor and punishable by a fine not to exceed one hundred dollars ($100.00). (1931, c. 106.)

ARTICLE 11.

Stock and Poultry Tonics.

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

ARTICLE 12.

Food, Drugs and Cosmetics.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-120. Title of Article. — This Article may be cited as the North Carolina Food, Drug and Cosmetic Act. (1939, c. 320, s. 1.)

Editor's Note. — For comment on this enactment, see 17 N.C.L. Rev. 400.

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

(1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(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.

(2) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture, and the term "Board" means the Board of Agriculture.

(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.

(3) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(4) The term "cosmetic" means

a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and

b. Articles intended for use as a component of any such articles, except that such terms shall not include soap.

(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.

(5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended
   a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
   b. To affect the structure or any function of the body of man or other animals.

(6) The term "drug" means
   a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
   b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
   c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
   d. Articles intended for use as a component of any article specified in paragraphs a, b or c; but does not include devices or their components, parts, or accessories.

(7) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(8) The term "food" means
   a. Articles used for food or drink for man or other animals,
   b. Chewing gum, and
   c. Articles used for components of any such article.

(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.).

(9) The term "immediate container" does not include package liners.

(10) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears

on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(11) The term "labeling" means all labels and other written, printed, or graphic matter
   a. Upon an article or any of its containers or wrappers, or
   b. Accompanying such article.

(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.

(13) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(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.

(14) The term "person" includes individual, partnership, corporation, and association.

(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.

(15) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things)

not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(16) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(17) The provisions of this Article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment. (1939, c. 320, s. 2; 1975, c. 614, ss. 1, 2.)

Editor's Note. — The 1975 amendment 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, 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."

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

(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic.

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of G.S. 106-131 or 106-135.

(5) The dissemination of any false advertisement.

(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.

(7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State of North Carolina from whom he received in good faith the food, drug, device or cosmetic.

(8) The removal or disposal of a detained or embargoed article in violation of G.S. 106-125.

(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.

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this Article.

(11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under G.S. 106-135, or that such drug complies with the provisions of such section.

(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 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).

This section applies to adulteration of foods kept for sale. It has no application, therefore, to a controversy involving certain preservation powders for fruits. Smith v. Alphin, 150 N.C. 425, 64 S.E. 210 (1909).

§ 106-123. Injunctions restraining violations. — In addition to the remedies hereinafter provided, the Commissioner of Agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of G.S. 106-122, irrespective of whether or not there exists an adequate remedy at law. (1939, c. 320, s. 4.)

§ 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.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated G.S. 106-122, subdivision (1) or (3) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the Commissioner of Agriculture to furnish the Commissioner the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency residing in the State of North Carolina who caused him to disseminate such advertisement. (1939, c. 320, s. 5; 1975, c. 614, s. 6.)

Editor's Note. — The 1975 amendment rewrote subsection (a).

Civil Liability. — Impure and dangerous articles of food, causing death of purchaser, subject the seller to liability in a civil action for damages. Ward v. Sea Food Co., 171 N.C. 33, 87 S.E. 958 (1916).

§ 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.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent; 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, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture. 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 Department of Agriculture that the article is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the Department of Agriculture shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (1939, c. 320, s. 6; 1973, c. 108, s. 53; 1975, c. 614, ss. 7-9.)

Editor's Note. — The 1975 amendment 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).

§ 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 rewrote this section.

§ 106-127. Report of minor violations in discretion of Commissioner. — Nothing in this Article shall be construed as requiring the Commissioner of Agriculture to report for the institution of proceedings under this Article, minor violations of this Article, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1939, c. 320, s. 8.)

§ 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 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.

Cited in Coffer v. Standard Brands, Inc., 30 N.C. App. 134, 226 S.E.2d 534 (1976).

§ 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 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."

For note on control of pesticides, see 49 N.C.L. Rev. 529 (1971).

§ 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.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed or filled as to be misleading.

(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.

(6) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by G.S. 106-128, unless
a. It conforms to such definition and standard, and
b. Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(8) If it purports to be or is represented as
a. A food for which a standard of quality has been prescribed by regulations as provided by G.S. 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or
b. A food for which a standard or standards of fill of container have been prescribed by regulation as provided by G.S. 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of subdivision (7) of this section, unless its label bears

a. The common or usual name of the food, if any there be, and
b. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each:

Provided, that, to the extent that compliance with the requirements of paragraph b of this subdivision is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board of Agriculture.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board of Agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(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 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).

§ 106-131. Permits governing manufacture of foods subject to contamination with microorganisms. — (a) Whenever the Commissioner of Agriculture finds after investigation by himself or his duly authorized agents, that the distribution in North Carolina of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality in this State, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, the Commissioner, then, and in such case only, shall promulgate

regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner as provided by such regulations.

(b) The Commissioner of Agriculture is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner shall immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the Commissioner of Agriculture shall have access to any factory or establishment, the operator of which holds a permit from the Commissioner of Agriculture for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (1939, c. 320, s. 12.)

§ 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 rewrote this section.

§ 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.

(3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(4) If it is a drug and any substance has been

a. Mixed or packed therewith so as to reduce its quality or strength; or

b. Substituted wholly or in part therefor. (1939, c. 320, s. 14; 1975, c. 614, ss. 22-24.)

Editor's Note. — The 1975 amendment 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).

§ 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.

(3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substances, which derivative has been by the Board after investigation, found to be, and by regulations under this Article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — May be habit forming."

(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.

(6) Unless its labeling bears
   a. Adequate directions for use; and
   b. Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of paragraph a of this subdivision, as applied to any drug or device, is not necessary for the protection of the public health, the Board of Agriculture shall promulgate regulations exempting such drug or device from such requirements.

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the Board of Agriculture. 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 with respect to packaging and labeling 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.

(8) If it has been found by the Department of Agriculture to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(9) a. If it is a drug and its container is so made, formed, or filled as to be misleading; or
   b. If it is an imitation of another drug; or
   c. If it is offered for sale under the name of another drug.

(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

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

(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 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).

§ 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, provided that the written prescription must bear the printed or stamped name, address, telephone number and DEA number of the prescriber in addition to his legal signature, 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; 1977, c. 421.)

Editor's Note. — The 1977 amendment added the proviso at the end of subdivision (4)a.

§ 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 rewrote this section. For the Federal Food, Drug and Cosmetic Act, see 21 U.S.C. § 301 et seq.

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

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution — This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subdivision and subdivision (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

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

(3) 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 injurious to health.

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

(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 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."

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ 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.

(3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If its container is so made, formed, or filled as to be misleading.

(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 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).

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ 106-138. False advertising. — (a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this Article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (1939, c. 320, s. 19.)

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ 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 rewrote this section.

§ 106-139.1. Declaration of net quantity of contents. — (a) All labels of consumer commodities, as defined by this Article, shall conform with the requirement 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 packaged 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.)

§ 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 rewrote this section.

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

(b) The Commissioner of Agriculture is authorized to conduct the examinations and investigations for the purposes of this Article through officers and employees of the Department or through any health, food or drug officer

or employee of the State, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the Department of Agriculture the arrangements for such examinations and investigations shall be approved by the directing head of such agency. (1939, c. 320, s. 22; 1975, c. 614, s. 39.)

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

§ 106-142. Publication of reports of judgments, decrees, etc. — (a) The Commissioner of Agriculture 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.

(b) The Commissioner of Agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Commissioner of Agriculture from collecting, reporting, and illustrating the results of the investigations of the Department. (1939, c. 320, s. 23.)

§ 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 rewrote this section so as to include references to 21 U.S.C. 71 et seq. and to poultry and poultry products.

§ 106-145. Effective date. — This Article shall be in full force and effect from and after January 1, 1940: Provided, that the provisions of G.S. 106-139 shall become effective on April 3, 1939, and thereafter the Commissioner of Agriculture is authorized hereby to conduct hearings, and the Board is authorized to promulgate regulations which shall become effective on and after the effective date of this Article as the Board shall direct. (1939, c. 320, s. 25.)

ARTICLE 13.

Canned Dog Foods.

§§ 106-146 to 106-158: Repealed by Session Laws 1973, c. 771, s. 19.

Cross References. — For present provisions covering the subject matter of the repealed sections, see §§ 106-284.30 through 106-284.46. As to the effect of the repeal upon existing rules and regulations of the Department of Agriculture and other State agencies, see note to § 106-284.30.

ARTICLE 14.

State Inspection of Slaughterhouses.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-159. Application for permit. — Any persons, firms or corporations engaged in the slaughter of meat-producing animals within the State of North Carolina, may make application to the Commissioner of Agriculture for a permit to transport, convey, and sell their products at any place within the limits of the State of North Carolina. (1925, c. 181, s. 1.)

§ 106-160. Investigation of sanitary conditions; issuance of permit. — It shall be the duty of the Commissioner of Agriculture, on receipt of such application described above, to cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided, and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the Commissioner of Agriculture as provided for in this Article, a numbered permit shall be issued to the persons, firms, or corporations making application for same. (1925, c. 181, s. 2.)

§ 106-161. Municipalities; inspection of meats. — Municipal corporations shall have power and authority under this Article to establish and maintain the inspection of meats and meat products, at establishments located within their corporate limits, and county commissioners shall have power and authority to establish and maintain inspection of meats and meat products at establishments not located in municipal corporations, but located within the boundaries of their county. (1925, c. 181, s. 3.)

Local Modification. — Rowan and city of Salisbury: 1953, c. 594, s. 1.

§ 106-162. Fees for inspection. — The officials of municipalities or counties in which such inspection is maintained shall have full power and authority to fix and collect fees for inspection of any and all meat animals or meat products necessary to the maintenance of such inspection, but no further inspection charge shall be made within the State. (1925, c. 181, s. 4.)

§ 106-163. Inspection conducted by veterinarian. — No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of a graduate veterinarian approved by the State Veterinarian of North Carolina or the North Carolina Veterinary Medical Examining Board. (1925, c. 181, s. 5.)

§ 106-164. Number of permit to identify meats; revocation of permit. — To each establishment complying with the provisions of this Article, the numbered permit shall be the establishment's official State number, and such number may be used to identify all passed meats and meat products prepared in such establishment. Such permit may be revoked by the Commissioner of Agriculture at any time when the establishment issued such permit violates any of the regulations prescribed for efficient inspection and sanitation. (1925, c. 181, s. 6.)

§ 106-165. Carcasses marked when inspected. — All meat carcasses inspected and passed in accordance with this Article shall be branded with a rubber stamp bearing the number of the establishment and the words "N.C. Inspected and Passed." (1925, c. 181, s. 7.)

§ 106-166. Rules and regulations for inspection; power of Commissioner. — The Commissioner of Agriculture shall have full power and authority to make and adopt all necessary rules and regulations for the efficient inspection, preparation and handling of meats and meat products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats and meat products at establishments operating under this Article. (1925, c. 181, s. 8.)

§ 106-167. Failure of butchers to keep record a misdemeanor. — If any butcher shall fail to keep a book of registration and register the earmark, brand, or flesh-mark of all cattle, sheep, swine, or goats, and the name of the parties purchased from, in said registration, and the date of said purchase, which registration shall be open to the inspection of all persons, he shall be guilty of a misdemeanor, and upon conviction shall pay a fine of fifty dollars ($50.00) for each offense: Provided, this shall apply only to the Counties of Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Halifax, Harnett, Johnston, Jones, Martin, Northampton, Orange, Pitt, Richmond, Rockingham, Warren, Wayne and Wilson, and Warsaw township in Duplin County. (1889, c. 318; 1891, cc. 38, 557; 1893, c. 116; 1895, c. 363; 1903, c. 82; 1905, c. 31; Rev., s. 3803; 1909, c. 865, s. 1; C. S., s. 5099.)

§ 106-168. Local: Sales of calves for veal. — It shall be unlawful for any person or persons, firm, or corporation to buy or sell, or engage in the business of buying and selling or shipping calves for veal under the age of six months, either dead or alive: Provided, that this section shall not apply to persons buying or selling heifer calves to be raised for milk cows, nor to bull calves for raising purposes or work stock.

Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars ($15.00) nor more than thirty dollars ($30.00), or be imprisoned for not less than 20 nor more than 30 days, or both, in the discretion of the court, for each and every offense.

This section shall apply to the following counties only: Alamance, Alexander, Ashe, Cherokee, Clay, Franklin, Gaston, Lee, McDowell, Madison, Mitchell, Robeson, Rutherford, Sampson, Wake and Wilson. (Ex. Sess. 1913, c. 80; 1915, c. 2; 1917, c. 93; Pub. Loc. 1917, cc. 299, 470; 1921, c. 85; 1925, c. 11; Pub. Loc. 1927, c. 143.)

Local Modification. — Alamance: Pub. Loc. 1913, c. 616; Pub. Loc. 1917, c. 391; Alexander: Pub. Loc. 1917, c. 180; Alleghany: Pub. Loc. 1927, c. 473; Anson: Pub. Loc. 1927, c. 422; Avery: Pub. Loc. 1927, c. 143; Durham: Pub. Loc. 1915, c. 155; Graham, Haywood, Jackson, Macon and Swain: Pub. Loc. 1927, c. 472; Lincoln: Pub. Loc. 1919, c. 159; Watauga: Pub. Loc. 1927, c. 473; Wilkes: Pub. Loc. 1913, c. 731; Ex. Sess. 1921, c. 12.

ARTICLE 14A.

Licensing and Regulation of Rendering Plants and Rendering Operations.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-168.1. Definitions. — For the purposes of this Article, unless the context or subject matter otherwise clearly requires,

(1) "Collector" means any person, as defined in this section, who collects raw material for the purpose of selling the same to any renderer for further processing.
(2) "Person" means any individual, partnership, firm, association or corporation.
(3) "Raw material" means inedible whole or portion of animal or poultry carcasses.
(4) "Rendering operation" means the processing of inedible whole or portion of animal or poultry carcasses and includes collection of such raw material for the purpose of processing.
(5) "Rendering plant" means the building or buildings in which raw material is processed and the premises upon which said building or buildings used in connection with such processing are located. (1953, c. 732.)

§ 106-168.2. License required. — No person shall engage in rendering operations unless such person shall hold a valid license to do so issued as hereinafter provided. (1953, c. 732.)

§ 106-168.3. Exemptions. — Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture as provided by the North Carolina Meat Inspection Act, or under United States government inspection. (1953, c. 732.)

§ 106-168.4. Application for license. — Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by him. The application shall set forth the name and residence of the applicant, his present or proposed place of business, the particular method which he intends to employ or employs in the processing of raw material, and such other information as the Commissioner may require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953. The applicant shall pay a fee of fifty dollars ($50.00) with each application, which said fee shall be the only charge made in connection with licensure. (1953, c. 732.)

§ 106-168.5. Duties of Commissioner upon receipt of application; inspection committee. — Upon receipt of the application, the Commissioner

shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture, one member who shall be designated by the Secretary of Human Resources and who shall be an employee of the Department of Human Resources, and one member who shall be designated by the director of the North Carolina Division of the Southeastern Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member. (1953, c. 732; 1957, c. 1357, s. 13; 1973, c. 476, s. 128.)

§ 106-168.6. Inspection by committee; certificate of specific findings. — The committee upon notification by the Commissioner shall promptly inspect the plans, specifications, and selected site in the case of proposed rendering plants and shall inspect the buildings, grounds, and equipment of established rendering plants. If the committee finds that the plans, specifications, and selected site in the case of proposed plants, or the buildings, grounds, and equipment in the case of established plants, comply with the requirements of this Article and the rules and regulations promulgated by the Commissioner not inconsistent therewith, it shall certify its findings in writing and forward same to the Commissioner. If there is a failure in any respect to meet such requirements, the committee shall notify the applicant in writing of such deficiencies and the committee shall within a reasonable time to be determined by the Commissioner make a second inspection. If the specified defects are remedied, the committee shall thereupon certify its findings in writing to the Commissioner. Not more than two inspections shall be required of the committee under any one application. (1953, c. 732.)

§ 106-168.7. Issuance of license. — Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a license to the applicant to conduct rendering operations as specified in the application. A license shall be valid until revoked for cause as hereinafter provided. (1953, c. 732.)

§ 106-168.8. Minimum standards for conducting rendering operations. — The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

(1) Buildings utilized in connection with the rendering plant shall be of sufficient size and shape to accommodate all phases of actual or intended processing. Adequate partitions shall be installed therein so as to eliminate any contact between raw materials and finished products and so as to preclude contamination of finished products. The buildings shall be constructed in a manner and of materials which will insure adequate drainage and sanitation in all phases of operation.

(2) Raw material upon arrival at the rendering plant shall be unloaded into a building for processing. All raw material shall be processed by approved methods within 24 hours after delivery to the rendering plant.

(3) Processing equipment shall be airtight, except for proper escapes for vapors caused by the cooking process.

(4) Cooking vapors shall be controlled and disposed of by approved methods.

(5) Vehicles used to transport raw material shall be so constructed as to prevent any drippings or seepings from such material from escaping

from the truck. Such vehicles shall have body sides of sufficient height that no portion of any raw material transported therein shall be visible. All vehicles shall be provided with suitable top or covering to prevent the spread of disease by flies or other agents during the transportation of raw material.

(6) All vehicles and containers used in transporting raw material shall be disinfected at the earliest practicable time after unloading, and shall, in any event, be disinfected before again being taken upon a public highway or before leaving the rendering plant. Approved facilities and materials for disinfection shall be carried on vehicles transporting carcasses. Employees shall be required to wear rubber boots which shall be disinfected prior to entry to a farm.

(7) Approved facilities, means and methods for disinfection shall be available at the rendering plant at all times. Employees and employees' clothing coming in contact with raw material shall be disinfected before coming in contact with any finished products, or any portion of the plant in which the same are located. Rodent and fly control measures shall be practiced as a further means of prevention of the spread of disease. (1953, c. 732.)

§ 106-168.9. Transportation by licensee. — Any person holding a license under the provisions of this Article, or acting as a collector as herein defined, may haul and transport raw material, except such material as may be specifically prohibited by law or by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this Article. (1953, c. 732.)

§ 106-168.10. Disposal of diseased animals. — Any person holding a license under the provisions of this Article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals. (1953, c. 732.)

§ 106-168.11. Authority of agents of licensee. — Authority granted to any person holding a valid license under the provisions of this Article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this Article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting. (1953, c. 732.)

§ 106-168.12. Commissioner authorized to adopt rules and regulations. — The Commissioner of Agriculture is hereby authorized to make and establish reasonable rules and regulations, not inconsistent with the provisions of this Article, after consulting the committee, for the proper administration and enforcement thereof. (1953, c. 732.)

§ 106-168.13. Effect of failure to comply. — Failure to comply with the provisions of this Article or rules and regulations not inconsistent therewith shall be cause of revocation of license, if such failure shall not be remedied within a reasonable time after notice to the licensee. Any person whose license is revoked may reapply for a license in the manner provided in this Article for an initial application, except that the Commissioner shall not be required to cause the rendering plant and equipment of the applicant to be inspected by the

committee until the expiration of 30 days from the date of revocation. (1953, c. 732.)

§ 106-168.14. Collectors subject to certain provisions. — Any collector, as defined in this Article, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. 106-168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto. (1953, c. 732.)

§ 106-168.15. Violation a misdemeanor. — Any person conducting rendering operations or collecting raw material in violation of the provisions of this Article shall be guilty of a misdemeanor and shall, upon conviction, be punished in the discretion of the court. (1953, c. 732.)

ARTICLE 15.

Inspection of Meat and Meat Products by Counties and Cities.

§ 106-169. Inspection; meat stamped as approved or condemned. — All persons, firms, or corporations engaged in the business of operating a meat packing plant or plants within the State of North Carolina where more than 1,000 beef cattle are slaughtered per annum, or more than 10,000 hogs or swine are slaughtered per annum, or more than 500 sheep are slaughtered per annum shall have the meat or beef of said slaughtered cattle inspected by a veterinary surgeon duly licensed by the State of North Carolina; said inspector shall be elected by the governing body of the municipal corporation wherein said packing plant or plants is or are situated, or, if said packing plant be not situated within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is situated. Said inspector shall condemn all meats found to be unfit for human consumption. Said inspector shall cause all meats so condemned either to be destroyed or put to some use which shall not be dangerous for the public health. Each and every piece of meat or beef not condemned by said inspector shall be stamped by him in the usual manner; the stamp to be used to stamp said meat or beef shall bear the following words: "North Carolina State Meat Inspection — Approved (insert name of inspector), Inspector." All meat or beef condemned by said inspector shall be stamped by a similar stamp, except that the word "condemned" shall be inserted thereon instead of the word "approved." (Ex. Sess. 1924, c. 11, s. 1.)

Local Modification. — Rowan and city of Salisbury: 1953, c. 594, s. 2.

Cross Reference. — As to veterinarians, licensing, etc., generally, see § 90-179 et seq.

Editor's Note. — For a discussion of meat inspection, the right to destroy, due process of law, and damages for the destruction of meat which was really fit for human consumption, see 3 N.C.L. Rev. 27. The act is summarized in 3 N.C.L. Rev. 149.

§ 106-170. Fees for inspection. — The charges for said inspection shall be as follows: Twenty-five cents (25¢) for each and every beef cattle or cow inspected; ten cents (10¢) for each and every hog inspected, and ten cents (10¢) for each and every sheep inspected; ten cents (10¢) for each and every veal calf inspected; no further inspection shall be necessary within the State except such inspection as is provided for in G.S. 106-120 to 106-145. No further or other inspection charges for the inspection of meat or beef inspected as provided herein shall be made within the State. (Ex. Sess. 1924, c. 11, s. 2; 1925, c. 311.)

§ 106-171. Veterinary not available; who to inspect. — Should no regularly licensed veterinary surgeon be available for the purposes of this Article, then the duties provided herein to be performed by said inspector shall be performed

by some competent person to be elected by the governing body of the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is located. (Ex. Sess. 1924, c. 11, s. 3.)

§ 106-172. Collection of fees; remuneration of inspector. — The fees or inspection charges herein provided for shall be collected by the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said plant is located; said fees or charges so collected shall be placed in the general fund of the municipal corporation or county collecting the same; the salary or remuneration of the inspector shall be fixed and paid by the municipal corporation or county by which said inspector is elected. (Ex. Sess. 1924, c. 11, s. 4.)

§ 106-173. Slaughterhouses, etc., under federal inspection, exempt from provisions of State inspection laws. — The provisions of G.S. 106-159 to 106-172 shall not be applicable to any slaughterhouse or meat packing plant, or any person, firm or corporation engaged in the business of the operation thereof, where such slaughterhouse or meat packing plant is operated under federal inspection pursuant to the provisions of the Meat Inspection Act of the United States, approved March 4, 1907, as amended. (1939, c. 329.)

ARTICLE 15A.

Meat Grading Law.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-173.1. Short title. — The short title of this Article shall be "The North Carolina Meat Grading Law." (1951, c. 1030, s. 1.)

§ 106-173.2. Definitions. — For the purpose of this Article, the following words, names and terms shall be construed respectively as follows:

(1) "Commissioner" means Commissioner of Agriculture of North Carolina.
(2) "Distributor" means any person, firm or corporation engaged in selling, handling or distributing meat.
(3) "Grader" means any person holding a grader's permit.
(4) "Grader's permit" means authority granted by the Commissioner to any person to grade meat in any plant or for any distributor holding a plant or distributor's permit.
(5) "Meat" means beef, lamb or pork.
(6) "Plant" means any person, firm or corporation engaged in slaughtering, packing or processing meat.
(7) "Plant or distributor's permit" means authority granted by the Commissioner to produce, handle, sell or distribute meat which is graded according to the provisions of this Article. (1951, c. 1030, s. 2.)

§ 106-173.3. Program inaugurated. — The Department of Agriculture shall inaugurate and conduct a program for the grading of meat which is slaughtered, processed or distributed in this State. (1951, c. 1030, s. 3.)

§ 106-173.4. Program shall be voluntary. — No plant or distributor is required to participate in this program, but any plant or distributor may participate so long as said plant or distributor meets the requirements for a permit as provided by this Article and continues to comply with those and other requirements which may be promulgated by the Board of Agriculture. (1951, c. 1030, s. 4.)

§ 106-173.5. Issuance of plant or distributor's permits. — (a) Any plant which produces satisfactory evidence to the Commissioner that it holds a grade-A health rating by the Commission for Health Services, both as to its plant proper and surrounding premises, and that it has the facilities to provide for both ante- and postmortem inspection of meat by a veterinarian or some other person acting under the supervision of a veterinarian, shall, upon application to the Commissioner, and the payment of a fee of one dollar ($1.00), be issued a plant or distributor's permit to grade meat as provided by this Article.

(b) Any distributor who produces satisfactory evidence to the Commissioner that the meat which is handled by him is slaughtered, processed or produced under conditions which would satisfy the requirements set out in subsection (a) of this section shall, upon the payment of one dollar ($1.00), be issued a plant or distributor's permit to grade meat as provided by this Article. (1951, c. 1030, s. 5; 1973, c. 476, s. 128.)

Editor's Note. — Under § 130-167, as amended by Session Laws 1973, c. 476, s. 128, the Commission for Health Services is authorized and directed to prepare rules and regulations governing the sanitation of places where meat and meat products are prepared, handled, stored or sold, and provide a system of scoring and grading such places. Therefore, "Commission for Health Services" has been substituted for "North Carolina Department of Public Health" in subsection (a) of this section, pursuant to Session Laws 1973, c. 476, s. 128.

§ 106-173.6. Revocation of plant or distributor's permit. — Any plant or distributor's permit may be revoked or suspended by the Commissioner if the holder of such permit fails to continue to comply with the requirements for obtaining such permit, or any other rules, regulations and standards of the Department of Agriculture or any law of this State relating to the handling of meat, but no permit shall be revoked without due notice to the holder thereof and an opportunity for the holder to be heard. (1951, c. 1030, s. 6.)

§ 106-173.7. Grader's permits. — A grader's permit, subject to the provisions of this Article shall be issued by the Commissioner when sufficient proof is presented to him to satisfy him that the person applying for such permit is of good moral character and has had sufficient training and experience to qualify him to grade meat, and when such applicant has paid to the Department of Agriculture the sum of one dollar ($1.00). (1951, c. 1030, s. 7.)

§ 106-173.8. Revocation of grader's permit. — Any grader's permit shall be revoked or suspended when it shall appear to the Commissioner that the holder of such permit has violated any rule, regulation or standard of the Department of Agriculture or any law of North Carolina relating to the handling of meat, but no permit shall be revoked without proper notice to the holder thereof and an opportunity for him to be heard. (1951, c. 1030, s. 8.)

§ 106-173.9. Supervision of program. — The Department of Agriculture, upon receiving a request from a plant holding a plant permit, shall inaugurate and supervise a grading program for said plant. (1951, c. 1030, s. 9.)

§ 106-173.10. Grades. — Each plant or distributor holding a plant or distributor's permit and participating in a meat-grading program authorized by

this Article shall cause all graded meat handled by it to be classified in the following grades: "prime," "choice," "good," "commercial," "cutter," "utility" and "canner." These designations may be made only by a person holding a grader's permit and the standards of quality which are required to make up these grades shall be the same as those used by the federal meat grading agency to classify meats in these same grades. (1951, c. 1030, s. 10.)

§ 106-173.11. All meat to be stamped. — Each plant or distributor holding a plant or distributor's permit shall, after a grader has determined the grade of any piece of meat handled by said plant or distributor, cause to be stamped on that piece of meat the grade name, the letters "N.C.D.A." and a letter, number or symbol to be assigned by the Department of Agriculture in order to identify the plant or distributor handling that piece of meat. (1951, c. 1030, s. 11.)

§ 106-173.12. Roller stamps to be rented. — Each plant or distributor holding a plant or distributor's permit shall obtain from the North Carolina Department of Agriculture one or more sets of roller stamps and shall pay a rental fee not in excess of the amount required to procure and supply these stamps. These roller stamps shall remain the property of the Department of Agriculture and shall be returned to the Department of Agriculture upon the suspension or revocation of the plant or distributor's permit or upon the request of the Commissioner. (1951, c. 1030, s. 12.)

§ 106-173.13. Roller stamps, contents of. — These roller stamps shall contain the letters "N.C.D.A." and a number, letter or other symbol to identify the plant or distributor using said stamp. The stamps shall also contain the words "prime," "choice," "good," "commercial," "utility," "cutter" and "canner" respectively. (1951, c. 1030, s. 13.)

§ 106-173.14. Reports by plants or distributors. — Plants or distributors holding meat-grading permits shall make reports regarding the number of animals slaughtered, number of animals graded, the grades within which these animals were classified and the origin of these animals, and such other information as the Commissioner may deem proper. These reports shall be filed when requested by the Commissioner and on the forms to be supplied by him. (1951, c. 1030, s. 14.)

§ 106-173.15. Fees. — The Commissioner is authorized to establish a uniform system of fees to be charged by the Department of Agriculture and these fees shall be charged for services performed in the administration of this Article. (1951, c. 1030, s. 15.)

§ 106-173.16. Rules and regulations; violation of Article or regulations a misdemeanor. — The Board of Agriculture is authorized, after public hearing following due public notice, to promulgate such rules, regulations, definitions and standards as may be necessary to carry out the provisions of this Article. The violation of any of the provisions of this Article, or any of the rules and regulations promulgated hereunder, shall constitute a misdemeanor and shall be punished in the discretion of the court. (1951, c. 1030, s. 16.)

ARTICLE 16.

Bottling Plants for Soft Drinks.

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

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 17.

Marketing and Branding Farm Products.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-185. Establishment of standard packages, etc., authorized. — The purpose of this Article is to give authority to investigate marketing conditions and to establish and maintain standard grades and packages and State brands for farm and horticultural crops and animal products. The term "farm products" as used hereafter in this Article shall be construed to mean any or all of the crops or products named above in this section. (1919, c. 325, s. 1; C. S., s. 4781; 1921, c. 140.)

§ 106-186. Power to employ agents and assistants. — The Board of Agriculture is charged with the execution of the provisions of this Article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent. (1919, c. 325, s. 2; C. S., s. 4782.)

§ 106-187. Board of Agriculture to investigate marketing of farm products. — It shall be the duty of the Board of Agriculture to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States Department of Agriculture. (1919, c. 325, s. 3; C. S., s. 4783.)

§ 106-188. Promulgation of standards for receptacles, etc. — After investigation, and from time to time as may be practical and advisable, the Board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality, and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a State brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the Congress of the United States, shall forthwith, as far as

applicable, be established or prescribed and promulgated as the official standard or requirement in this State: Provided, that no standard established or requirement for marking prescribed under this Article shall become effective until the expiration of 30 days after it shall have been promulgated. (1919, c. 325, s. 4; C. S., s. 4784.)

§ 106-189. Sale and receptacles of standardized products must conform to requirements. — Whenever any standard for the grade or other classification of any farm product becomes effective under this Article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this Article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as "Not graded." This proviso shall not apply to peaches. (It is the intent and purpose of this exemption to exempt peaches from the requirements of Article 17 of Chapter 106 that ungraded peaches, when sold or offered for sale, shall be marked "ungraded," "field run," "not graded," "grade not determined" or "unclassified," or words of similar import.) The Board of Agriculture, or the Commissioner of Agriculture, and their authorized agents, are authorized to issue "stop-sale" orders which shall prohibit further sale of the products if they have reason to believe such products are being offered, or exposed, for sale in violation of any of the provisions of this Article until the law has been complied with or said violations otherwise legally disposed of.

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this Article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this Article, or unless the receptacle be of a capacity twenty-five percent (25%) less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five percent (25%) of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this Article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this Article no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; C. S., s. 4785; 1943, c. 483; 1969, c. 849.)

Editor's Note. — For comment on the 1943 amendment, see 21 N.C.L. Rev. 329.

§ 106-189.1. Apples marked as to grade; penalty. — (a) All apples sold, offered for sale or shipped into this State in closed containers shall bear on the container, bag or other receptacle no grade other than the applicable U.S. grade or standard or the marking "unclassified," "not graded" or "grade not determined."

(b) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than fifty dollars ($50.00). Each day on which apples are sold or offered for sale

in violation of the provisions of this section shall constitute a separate violation. (1971, c. 867, ss. 1, 2; 1973, c. 506.)

Constitutionality.—This section violates the commerce clause and is unconstitutional. Washington State Apple Adv. Comm'n v. Holshouser, 408 F. Supp. 857 (E.D.N.C. 1976), aff'd sub nom., Hunt v. Washington State Apple Adv. Comm'n, 432 U.S. 333, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977).

§ 106-189.2. Sale of immature apples. — (a) All apples sold, offered for sale, or shipped into this State shall meet the requirements for maturity of the United States standards for grades of apples.

(b) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100.00). Each day on which apples are sold or offered for sale in violation of the provisions of this section shall constitute a separate violation. (1973, c. 973.)

§ 106-190. Inspectors or graders authorized; revocation of license. — The Board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this Article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this Article, or has violated any provision of this Article, or of the rules and regulations made hereunder, the Board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing. (1919, c. 325, s. 6; C. S., s. 4786.)

§ 106-190.1. Aggregate State service credit for graders. — All fruit, vegetable, grain, poultry, egg and egg products graders employed by the Board in positions in fact permanent and full-time, but who were inadvertently or incorrectly classified as temporary until January 1, 1974, shall be given aggregate State service credit for the period of employment before January 1, 1974. This credit shall be given only to persons employed on a full-time, year-round basis during which time they were classified as temporary. Credit shall be given for purposes of determining the amount of leave earned by the employee, eligibility for and amount of longevity pay, and any other determinations for which the length of State service is relevant. Employees given retroactive aggregate State service credit under this section shall receive retroactive longevity pay, to the extent for which they would have been eligible for longevity pay if they had been correctly classified from the date of their initial employment, for all service beginning January 1, 1974, until August 1, 1977, with any longevity pay actually paid to be subtracted therefrom. (1977, c. 1038, s. 1.)

§ 106-191. Appeal from classification. — The owner or person in possession of any farm product classified in accordance with the provisions of this Article may appeal from such classification under such rules and regulations as may be prescribed. (1919, c. 325, s. 7; C. S., s. 4787.)

§ 106-192. Certificate of grade prima facie evidence. — A certificate of the grade or other classification of any farm product issued under this Article shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (1919, c. 325, s. 8; C. S., s. 4788.)

§ 106-193. Unwholesome products not classified; health officer notified. — Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the State or of any county or municipality thereof. (1919, c. 325, s. 9; C. S., s. 4789.)

§ 106-194. Inspection and sampling of farm products authorized. — Agents and employees are authorized from time to time to ascertain the amount of any farm products in this State, to inspect the same in the possession of any person engaged in the business of marketing them in this State, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products. (1919, c. 325, ss. 10, 11; C. S., s. 4790.)

§ 106-195. Rules and regulations; how prescribed. — The Board of Agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this Article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States, prescribed under any act of Congress of the United States relating to the marketing of farm products. (1919, c. 325, s. 12; C. S., s. 4791.)

Cited in Coffer v. Standard Brands, Inc., 30 N.C. App. 134, 226 S.E.2d 534 (1976).

§ 106-196. Violation of Article or regulations a misdemeanor. — Any person who violates any provision of this Article, or of the rules and regulations made under the Article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who wilfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this Article shall be punished by a fine of not more than one hundred dollars ($100.00), or by imprisonment in the county jail for not more than 30 days, or by both in the discretion of the court. (1919, c. 325, ss. 13, 14; C. S., s. 4792.)

ARTICLE 18.

Shipper's Name on Receptacles.

§ 106-197. Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor. — Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the State, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. This section shall not apply to railroads, express companies and other transportation companies

selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (1915, c. 193; C. S., s. 5087.)

ARTICLE 19.

Trademark for Standardized Farm Products.

§ 106-198. Adoption, design and copyright of trademark, etc. — The Board of Agriculture shall adopt an official trademark, brand, or label, the design of which shall incorporate the words "Tar Heel" superimposed on an outline map of North Carolina, to identify North Carolina farm products of grade and quality in keeping with standards to be set up by the Board governing its use. The Board of Agriculture shall cause this trademark to be copyrighted to prevent imitation and infringement. (1941, c. 155, s. 1.)

§ 106-199. Regulation of use of trademark. — The trademark may be used only in the manner prescribed by the Board of Agriculture and under the rules and regulations to be laid down by the Board for its protection and use, and only on products meeting the quality, condition, pack and grade standards prescribed by the Board consistent with G.S. 106-185 to 106-196. No person, firm or corporation shall use this trademark on any product until the official inspection service of the Department of Agriculture certifies that the product meets the requirements of quality, condition, pack and grade standard set up by the Board for the product. (1941, c. 155, s. 2.)

§ 106-200. License for use of trademark. — Growers, handlers, shippers or processors may procure a license to use the trademark on standardized products by applying to the Commissioner of Agriculture. The Commissioner may investigate the integrity and business methods of each applicant and may refuse licenses to applicants whose use might endanger the reputation of the trademark. The Commissioner may suspend, revoke or cancel the license of any user who violates the terms of his license or of any rule or regulation of the Board concerning its use. The Board of Agriculture may charge reasonable and uniform fees for the issuance of these licenses and for the use of the trademark by these licensees, and shall use these revenues to apply on the cost of administering this Article and to carry out a program of merchandising and advertising for standardized identified North Carolina farm products. (1941, c. 155, s. 3.)

§ 106-201. Licensing of providers of approved designs; furnishing list of growers, etc. — To facilitate the procurement of tags, labels, packages, bags or containers properly designed and constructed to display the official North Carolina State trademark, the following regulations shall be established:

(1) Manufacturers or distributors of tags, labels, packages, bags or containers shall apply to the Commissioner of Agriculture for a provider's license, and shall submit samples or designs of such tags, labels, packages, bags or containers for the Commissioner's approval as to their construction, adaptability and practicability for the use planned. The Commissioner shall license manufacturers or distributors of approved designs as approved providers of such articles, subject to rules, regulations and a reasonable license fee to be prescribed by the Board of Agriculture.

(2) No such license shall be issued until the provider agrees to furnish such trademarked supplies only to persons, partnerships or corporations

within the State licensed to use the trademark. The approved provider shall immediately report to the Commissioner of Agriculture, on blanks provided for that purpose, each sale and shipment of such authorized supplies, the name of the purchaser, the quantity and type of supplies sold, and the point to which it was shipped or delivered. The Commissioner shall furnish approved providers with current lists of growers, shippers, handlers or processors licensed to use the North Carolina trademark.

(3) The Commissioner of Agriculture may suspend, revoke or cancel licenses of approved providers for violation of any of the terms of this license, in which case equitable arrangements will be made for disposal of manufactured goods in stock. (1941, c. 155, s. 4.)

§ 106-202. Violation made misdemeanor. — Any person, firm or corporation who knowingly violates any of the provisions of this Article or any of the rules and regulations promulgated under it by the Board of Agriculture, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both, for each offense. (1941, c. 155, s. 5.)

ARTICLE 20.

Standard Weight of Flour and Meal.

§§ 106-203 to 106-209: Repealed by Session Laws 1945, c. 280, s. 2.

Cross Reference. — As to act establishing uniform weights and measures generally, see § 81A-1 et seq.

ARTICLE 21.

Artificially Bleached Flour.

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

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.

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.

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.

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."

§ 106-234: Repealed by Session Laws 1949, c. 978, s. 2.

§ 106-235: Repealed by Session Laws 1963, c. 1135.

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

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.

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 25.

North Carolina Egg Law.

§§ 106-240 to 106-245: Repealed by Session Laws 1955, c. 213, s. 14.

§§ 106-245.1 to 106-245.12: Repealed by Session Laws 1965, c. 1138, s. 3.

ARTICLE 25A.

North Carolina Egg Law.

§ 106-245.13. Short title; scope; rule of construction. — This Article is named and may be cited as the North Carolina Egg Law and relates to eggs sold in the State of North Carolina. Words used in the singular form in this Article shall include the plural, and vice versa as the cause may require. (1965, c. 1138, s. 1.)

Editor's Note. — The act inserting this Article repealed former Article 25, which was also entitled "North Carolina Egg Law." Where former provisions were similar to the new provisions, the historical citations to the repealed sections have been added to the new sections.

§ 106-245.14. Definitions. — The following words, terms, and phrases shall be construed for the purpose of this Article as follows:

(1) "Authorized representative" means the Commissioner or any duly authorized agent or employee who is assigned to carry out the provisions of this Article.
(2) "Candling and grading" means selecting eggs as to their conformity to the standards of quality and size or weight class preparatory to marketing them as a specific grade and size or weight class.
(3) "Commissioner" means the North Carolina Commissioner of Agriculture.
(4) "Consumer" means any person who purchases eggs for his or her use or his or her own family use or consumption and not for resale.
(5) "Container" means any box, case, basket, carton, sack, bag, or other receptacle containing eggs. "Subcontainer" means any container used within another container.
(6) "Distributor" means any person, producer, firm or corporation offering for sale or distributing eggs in the State to a retailer, cafe, restaurant, or any other establishment offering for sale to consumers, including but not limited to institutional consumers as defined in this Article. Distributors also shall include any person, producer, firm or corporation distributing eggs to his or its own retail outlets or stores but shall not include any person, firm or corporation engaged only to haul or transport eggs.
(7) "Eggs" means product of a domesticated chicken in the shell or as further processed egg products.
(8) "Facilities" means any room, compartment, refrigerator or vehicle used in handling eggs in any manner.
(9) "Grades" shall mean and include specifications defining the limit of variation in quality of two or more eggs.
(10) "Institutional consumer" means a restaurant, hotel, licensed boarding house, commercial bakery or any other institution in which eggs are prepared as food for use by its patrons, residents or patients.
(11) "Law" means the provisions of this Article and all rules and regulations issued hereunder.
(12) "Lots" means a physical grouping of eggs or containers with eggs therein, as determined by the North Carolina Department of Agriculture.
(13) "Marketing of eggs" or "market" means the sale, offer for sale, gift, barter, exchange, advertising, branding, marking, labeling, grading, or other preparatory operation or distribution in any manner of eggs or containers of eggs as defined in this Article.
(14) "Packer" means any person that is engaged in grading, shell treating

or packing eggs for sale to consumers, direct or through distribution outlets of stores.

(15) "Person" means and includes any individual, producer, firm, partnership, exchange, association, trustee, receiver, corporation, or any other business organization and any member, officer, or employee thereof.

(16) "Retailer" means any person who markets eggs to consumers.

(17) "Size or weight class" means a classification of eggs based on weight at the rate per dozen.

(18) "Standards for quality" means specifications of the physical characteristics of any or all of the component parts or the individual egg. (1965, c. 1138, s. 1.)

§ 106-245.15. Designation of grade and class on containers required; conformity with designation; exemption. — No person shall market to consumers, institutional consumers or retailers or expose for that purpose any eggs unless there is clearly designated therewith on the container the grade and size or weight class established in accordance with the provisions of this Article and such eggs shall conform to the designated grade and size or weight class (except when sold on contract to a United States governmental agency); provided, however, a producer marketing eggs of his own production shall be exempt from this section when such marketing occurs on the premises where the eggs are produced, processed, or when ungraded sales do not exceed 30 dozen per week. (1955, c. 213, s. 7; 1965, c. 1138, s. 1; 1973, c. 739, s. 1.)

§ 106-245.16. Standards, grades and weight classes. — The Board of Agriculture shall establish and promulgate such standards of quality, grades and weight classes for eggs sold or offered for sale in this State as will protect the consumer and the institutional consumer from eggs which are injurious or likely to be injurious to health by reason of the condition of the shell, or contents thereof, or by reason of the manner in which eggs are processed, handled, shipped, stored, displayed, sold or offered for sale. Such standards of quality, grades and weight classes as are promulgated and established by the Board shall also promote honesty and fair dealings in the poultry industry. Such standards, grades and weight classes may be modified or altered by the Board whenever it deems it necessary. (1955, c. 213, s. 9; 1965, c. 1138, s. 1; 1969, c. 139, s. 1.)

§ 106-245.17. Stop-sale orders. — If an authorized representative of the North Carolina Department of Agriculture shall determine, after inspection, that any lot of eggs is in violation of this Article, he may issue a "stop-sale order" as to such lot or lots of eggs and forthwith notify the owner or custodian of such eggs. Such order shall specify the reason for its issuance. A stop-sale order shall prohibit the further marketing of the eggs subject to it until such eggs are released by the State agency. (1965, c. 1138, s. 1.)

§ 106-245.18. Container labeling. — (a) Any container or subcontainer in which eggs are marketed shall bear on the outside portion of the container, but not be limited to, the following:

(1) The applicable consumer grade provided for in this Article.

(2) The applicable size or weight class provided for in this Article.

(3) The word "eggs."

(4) The numerical count of the contents.

(5) The name and address of the packer or distributor. Words and numerals used to designate the grade and size shall be in clearly legible bold-faced type at least three-eighths inch in height. Any person intending to reuse a container shall obscure any inappropriate labeling thereon and relabel the container in accordance with this section prior to refilling the container with eggs. In any case, the address of the

packer or distributor shall be shown in letters not exceeding three-eighths inch in height.

(b) The term "fresh" may only be applied to eggs conforming to the specifications for Grade A or better. No other descriptive term other than applicable grade and size may be applied. (1965, c. 1138, s. 1; 1973, c. 739, s. 2.)

§ 106-245.19. Invoices. — (a) Any person, except a producer marketing eggs to another person for candling and grading, when marketing eggs to a retailer, institutional consumer, or other person shall furnish to the purchaser at the time of delivery an invoice showing date of sale, name and address of the seller, name of purchaser, quantity, grade and size-weight classification.

(b) A copy of such invoice shall be kept on file by both the person selling and the purchaser at their respective places of business for a period of at least 30 days. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ 106-245.20. Advertisements. — No person shall advertise eggs for sale at a given price unless the unabbreviated grade or quality and size-weight are conspicuously designated in block letters at least half as high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ 106-245.21. Rules and regulations. — The North Carolina Board of Agriculture is authorized to make and amend, from time to time, such rules and regulations as may be necessary to administer and enforce the provisions of this Article. Such rules and regulations shall be published and copies thereof made available to interested parties upon request therefor. (1955, c. 213, s. 8; 1965, c. 1138, s. 1.)

§ 106-245.22. Sanitation. — (a) Any person engaged in the marketing of or the processing of eggs for marketing shall, in addition to maintaining egghandling facilities in a manner commensurate with laws governing food establishments, keep the eggs in a proper environment, in accordance with regulations promulgated by the North Carolina Board of Agriculture, to maintain quality. In addition, any container, including the packaging material therein, when used for the marketing of eggs shall be clean, unbroken and free from foreign odor. In all instances eggs shall, so far as possible and by use of all reasonable means, be protected from being soiled or dirtied by foreign matter. When cleaning is necessary a sanitary method approved by the Commissioner shall be employed.

(b) Repealed by Session Laws 1973, c. 739, s. 3. (1965, c. 1138, s. 1; 1973, c. 739, s. 3.)

§ 106-245.23. Power of Commissioner. — The Commissioner, or his authorized agents or representatives, may enter, during the regular business hours, any establishment or facility where eggs are bought, stored, offered for sale, or processed, in order to inspect and examine eggs, egg containers, and the premises, and to examine the records of such establishments or facilities relating thereto. (1955, c. 213, s. 10; 1965, c. 1138, s. 1.)

§ 106-245.24. Penalties for violations; enjoining violations; venue. — (a) Any person who violates any provision of this Article shall be guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars ($25.00) and not more than two hundred dollars ($200.00), or imprisonment for not more than 30 days, or both.

(b) In addition to the criminal penalties provided for above, the Commissioner of Agriculture may apply by equity to a court of competent jurisdiction, and such court shall have jurisdiction and for cause shown to grant temporary or permanent injunction, or both, restraining any person from violating, or continuing to violate, any provisions of this Article.

(c) Any proceeding for a violation of this Article may be brought in the county where the violator resides, has a place of business or principal office or where the act or omission or part thereof, complained of occurred. (1955, c. 213, s. 12; 1965, c. 1138, s. 1.)

§ 106-245.25. Warnings in lieu of criminal prosecutions. — Nothing in this Article shall be construed as requiring the Commissioner to report for criminal prosecution violations of this Article whenever he believes that the public interest will be adequately served and compliance with the Article obtained by a suitable written notice or warning. (1965, c. 1138, s. 1.)

§ 106-245.26. Remedies cumulative. — Each remedy provided in this Article shall be in addition to and not exclusive of any other remedy provided for in this Article. (1965, c. 1138, s. 1.)

§ 106-245.27. Persons punishable as principals. — (a) Whoever commits any act prohibited by any section of this Article or aids, abets, induces, or procures its commission, is punishable as a principal.

(b) Whoever causes an act to be done which if directly performed by him or another would be a violation of the provisions of this Article, is punishable as a principal. (1965, c. 1138, s. 1.)

§ 106-245.28. Act of agent as that of principal. — In construing and enforcing the provisions of this Article, the act, omission, or failure, of any agent, officer or other person acting for or employed by an individual, association, partnership, corporation, or firm, within the scope of his employment or office shall be deemed to be the act, omission, or failure to [of] the individual, association, partnership, corporation, or firm as well as that of the person. (1965, c. 1138, s. 1.)

ARTICLE 26.

Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-246. Cleanliness and sanitation required; washrooms and toilets, living and sleeping rooms; animals. — For the protection of the health of the people of the State, all places where ice cream, milk shakes, milk sherbet, sherbet, water ices and other similar frozen or semifrozen food products are made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all workrooms where the products of plants named herein are made, mixed, stored or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable washrooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animal shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows or other openings. (1921, c. 169, s. 1; C.S., s. 7251(a); 1933, c. 431, s. 1; 1959, c. 707, s. 1.)

§ 106-247. Cleaning and sterilization of vessels and utensils. — Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyors, and all utensils, tools and implements used in making or handling cream, ice cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practicable. (1921, c. 169, s. 2; C.S., s. 7251(b).)

§ 106-248. Purity of products. — All cream, ice cream, butter, cheese or other product produced in places named herein shall be pure, wholesome and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the Board of Agriculture provided for in G.S. 106-253; and whole milk, sweet cream, ice cream mix, and other mixes shipped into this State from other states and used in the manufacture of frozen or semifrozen dairy products processed or sold in this State shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing name of product, name and address of processor and date of pasteurization. (1921, c. 169, s. 3; C. S., s. 7251(c); 1933, c. 431, s. 2; 1959, c. 707, s. 2.)

§ 106-249. Receivers of products to clean utensils before return. — Every person, company, or corporation who shall receive milk, cream, or ice cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practicable after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper. (1921, c. 169, s. 4; C. S., s. 7251(d).)

§ 106-250. Correct tests of butterfat; tests by Board of Agriculture. — Creameries and factories that purchase milk and cream from producers of same on a butterfat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this Article. The Board of Agriculture, under regulations provided for in G.S. 106-253, shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products. (1921, c. 169, s. 5; C. S., s. 7251(e).)

§ 106-251. Department of Agriculture to enforce law; examinations. — It shall be the duty of the Department of Agriculture to enforce this Article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this Article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the Department in the performance of his duty in connection with this Article shall be guilty of a violation of this Article. (1921, c. 169, s. 6; C. S., s. 7251(f).)

§ 106-252. Closure of plants for violation of Article; certificate to district attorney of district. — If it shall appear from the examinations that any provision of this Article has been violated, the Commissioner of Agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of the place refuses or fails to comply with the order, law or regulations, the Commissioner shall then certify the facts in the case to the district attorney in the district in which the violation was committed. (1921, c. 169, s. 7; C. S., s. 7251(g); 1973, c. 47, s. 2.)

§ 106-253. Standards of purity and sanitation; regulating trade or brand names of frozen or semifrozen desserts. — The Board of Agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this Article, as shall be necessary to make provisions of this Article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed

to be a violation of this Article. It shall be unlawful for any person, firm or corporation to use the words "cream," "milk," or "ice cream," or either of them, or any similar sounding word or terms, as a part of or in connection with any product, trade name or brand of any frozen or semifrozen dessert manufactured, sold or offered for sale and not in fact made from dairy products under and in accordance with regulations, definitions or standards approved or promulgated by the Board of Agriculture. (1921, c. 169, s. 8; C. S., s. 7251(h); 1933, c. 431, s. 3; 1945, c. 846; 1959, c. 707, s. 3.)

§ 106-254. Inspection fees; wholesalers; retailers and cheese factories. — For the purpose of defraying the expenses incurred in the enforcement of this Article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices, mixes for frozen or semifrozen desserts and other similar frozen or semifrozen food products are made or stored, or any cheese factory or butter-processing plant that disposes of its products at wholesale to retail dealers for resale in this State shall pay to the Commissioner of Agriculture each year an inspection fee of twenty dollars ($20.00). Each maker of ice cream, milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semifrozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of five dollars ($5.00) each year. The inspection fee of five dollars ($5.00) shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis. (1921, c. 169, s. 9; C. S., s. 7251(i); 1933, c. 431, s. 4; 1959, c. 707, s. 4; 1961, c. 791.)

§ 106-255. Violation of Article a misdemeanor; punishment. — Any person, firm, or corporation who shall violate any of the provisions of this Article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars ($25.00) for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 169, s. 10; C. S., s. 7251(j).)

ARTICLE 27.

Records of Purchases of Milk Products.

§ 106-256. Annual reports to Dairy Division by creameries, milk-distributing plants, etc. — Every person, firm or corporation owning or operating a milk-processing plant, creamery, milk-distributing or cream-buying station in this State, where milk or cream is received, shall file on or before April 1 of each year, upon blanks furnished, a report to the Dairy Division of the State Department of Agriculture, showing the amount of milk and cream received by such plants or stations during the calendar year preceding. The said report shall show the amount of butter, cheese, ice cream or other dairy products manufactured. (1939, c. 327, s. 1.)

§ 106-257. Records of purchases of cream. — Records of the purchase of cream shall be kept at each plant or station for a period of six months from the date of purchase, and shall show the date of purchase, the net pounds of cream purchased, the butterfat tests, the price of butterfat, and the amount paid therefor, in such manner as may be required on the report blanks provided. When payment for cream is made in cash, receipts of such payments shall be kept with the records; otherwise canceled checks or facsimile impressions shall be kept as receipts with records. Such records shall be available for inspection by any authorized representative of the Commissioner of Agriculture. (1939, c. 327, s. 2.)

§ 106-258. Individual plant records treated as confidential. — Any

individual plant records shall be treated as confidential by anyone handling them and such individual records shall not be published or made accessible to any unauthorized person or representative. (1939, c. 327, s. 3.)

§ 106-259. Failure to comply with provisions of Article made misdemeanor. — Any person, firm or corporation owning or operating a creamery, cheese plant, condensed-milk plant, ice-cream plant, milk depot, or milk-distributing plant, or milk- or cream-buying station failing to comply with the provisions of this Article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1939, c. 327, s. 4.)

ARTICLE 28.

Records and Reports of Milk Distributors and Processors.

§ 106-260. "Milk" defined. — Wherever the word "milk" appears hereinafter in this Article, it shall be construed to include all whole milk, cream, chocolate milk, buttermilk, skim milk, special milk and all flavored milk, including flavored drinks, skim condensed, whole condensed, dry milks and evaporated. (1941, c. 162, s. 1; 1951, c. 1133, s. 1.)

§ 106-261. Reports to Commissioner of Agriculture as to milk purchased and sold. — Every person, firm or corporation that purchases milk for processing or distribution or sale, or that purchases milk for processing and distribution and sale, in North Carolina shall, not later than the twentieth of each month following the month such business is carried on, furnish information to the Commissioner of Agriculture, upon blanks to be furnished by him which will show a detailed statement of the quantities of the various classifications of milk purchased and the class in which milk was distributed or sold. Such report shall include all milk purchased from producers and other sources, imported, all milk sold to consumers, sold or transferred between plants, distributors, affiliates and subsidiaries, and all milk used in the manufacture of other dairy products; provided, however, that every person, firm or corporation engaged in purchasing milk and/or dairy products as defined in G.S. 106-260, for processing and manufacturing purposes only and who is not engaged in distributing and/or selling milk or milk products in fluid form, shall be required to report only the receipts of such milk or milk products and the quantities of dairy products manufactured. Provided, further, that the provisions of this section shall not apply to retail stores unless the same are owned, controlled or operated by milk processors and/or distributors. (1947, c. 162, s. 2; 1951, c. 1133, s. 2.)

§ 106-262. Powers of Commissioner of Agriculture. — The Commissioner of Agriculture is hereby authorized and empowered:

(1) To require such reports as will enable him to determine the quantities of milk purchased and the classification in which it was used or disposed;
(2) To designate any area of the State as a natural marketing area for the sale or use of milk or milk products;
(3) To set up classifications for the sale or use of milk or milk products for each marketing area after full, complete and impartial hearing. Due notice of such hearing shall be given.
(4) To make rules and regulations and issue orders necessary to carry out and enforce the provisions of this Article, including the supervision of producer bases and other production incentive plans; methods of uniform and equitable payments to all producers selling milk to the same firm, person or corporation; uniform methods of computing

weights of milk and/or milk products; and maximum handling and transportation charges for milk sold and/or transferred between plants. (1941, c. 162, s. 3; 1951, c. 1133, s. 3.)

§ 106-263. Distribution of milk in classification higher than that in which purchased. — It shall be unlawful for any operator of a milk processing plant or any milk distributor, required to make reports under this Article, or their affiliates or subsidiaries, to sell, use, transfer, or distribute any milk in a classification higher than the classification in which it was purchased, except in an emergency declared and approved in writing by the local board of health having supervision of operators and distributors on such market for a period of two weeks, and such period may be extended if, in the opinion of the local board of health, an emergency still exists at the end of such two weeks' period. (1941, c. 162, s. 4.)

§ 106-264. Inspections and investigations by Commissioner. — For the purpose of administering this Article the Commissioner of Agriculture or his agent is hereby authorized to enter at all reasonable hours all places where milk is being stored, bottled, or processed, or where milk is being bought, sold, or handled, or where books, papers, records, or documents relating to such transactions are kept, and shall have the power to inspect and copy the same in any place within the State, and may take testimony for the purpose of ascertaining facts which in the judgment of the Commissioner are necessary to administer this Article. The Commissioner shall have the power to determine the truth and accuracy of said books, records, papers, documents, accounts, and reports required to be furnished by milk distributors, their affiliates or subsidiaries in accordance with the provisions of this Article. (1941, c. 162, s. 5.)

§ 106-265. Failure to file reports, etc., made unlawful. — It shall be unlawful for any person, firm or corporation engaged in the business herein regulated to fail to furnish the information and file the reports required by this Article, and each day's failure to furnish the reports required hereunder shall constitute a separate offense. (1941, c. 162, s. 6.)

§ 106-266. Violation made misdemeanor. — Any person, firm, or corporation violating any of the provisions of this Article and/or any rule, regulation or order promulgated in accordance with the provisions of this Article shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000), or be imprisoned for not more than one year, or both fined and imprisoned in the discretion of the court. (1941, c. 162, s. 7; 1951, c. 1133, s. 4.)

ARTICLE 28A.

Regulation of Milk Brought into North Carolina from Other States.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-266.1. Requirements to be complied with by out-of-state shippers of milk or cream. — No person, firm, association or corporation shall ship, transport, carry, send or bring into this State any milk or cream for fluid

distribution without first having applied for and obtained from the Commissioner of Agriculture of this State a permit authorizing such transaction, shipment or transportation. In order to defray the expenses of the enforcement of this Article, the Commissioner of Agriculture shall collect a fee of twenty-five dollars ($25.00) for the issuance of such permit. The Board of Agriculture is authorized and empowered to establish, determine, fix and promulgate rules and regulations containing all necessary definitions, conditions, standards and classifications of the type, kind, quality, conditions of production, sanitary conditions and other reasonable requirements that must be complied with before milk or cream is shipped, transported, carried or brought into this State, including compliance with the Milk Audit Law of this State. Before any person, firm, association or corporation ships, transports, brings, sends or carries any milk or cream into this State, advance notice of such shipment or transportation shall be given to the Commissioner of Agriculture of this State and contain such information as the Board of Agriculture shall prescribe by rules and regulations. The Commissioner of Agriculture is authorized to suspend, immediately upon notice to a permit holder, any permit issued under authority of this section if it is found by him that any of the conditions of the permit or any of the rules, regulations and laws have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Agriculture shall, immediately after prompt hearing and such other examinations or inspections as he deems proper, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. Any permit issued by the Commissioner of Agriculture under the authority of this section may be revoked after an opportunity for a hearing by the Commissioner of Agriculture, upon the violation by the holder of the permit of any of the terms, conditions, rules and regulations issued and promulgated by authority of this section. All milk or cream shipped, transported, carried, sent or brought into this State shall be sold to, consigned to, delivered to, be transported, sent or carried only to a person, firm, association or corporation or to a milk distributor in this State holding or possessing an unrevoked permit from the Commissioner of Agriculture authorizing the receiving or importation of such milk or cream. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31 of each year.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State the Commissioner of Agriculture may issue to approved permit holders, or to nonpermit holders, temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area in accordance with such regulations as the Commissioner of Agriculture may prescribe for each temporary permit. (1949, c. 822.)

§ 106-266.2. Requirements and standards for distributors in this State distributing imported milk or cream. — No person, firm, association or corporation shall import, transport into, receive, bring into or cause to be imported or to be sent into this State from another state for the purpose of sale, for the purpose of offering for sale, for the purpose of distribution any milk or cream unless such person, firm, association or corporation has obtained a permit from the Commissioner of Agriculture for such purpose. All permits issued under the authority of this section shall be issued after the payment of a fee of twenty-five dollars ($25.00) to the Commissioner of Agriculture. The permits issued hereunder shall be conditioned upon compliance by the applicant or holder with the rules and regulations and laws of North Carolina governing milk or cream and such other definitions and standards as may be established and promulgated by the Board of Agriculture. The Commissioner of Agriculture is

authorized to suspend, immediately upon due notice, any permit issued under authority of this section if it is found by the Commissioner that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Agriculture shall, immediately after prompt hearing, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued, or as amended. The permits issued hereunder may be revoked after due notice and an opportunity for hearing by the Commissioner of Agriculture upon a finding at such hearing of any violation of any of the conditions, terms or requirements established and promulgated by the Board of Agriculture or of any of the laws of the State governing milk or cream, including, but not by way of limitation, the Milk Audit Law and other dairy laws of the State. It shall be the duty of the Commissioner of Agriculture to issue and enforce a written or printed "stop-sale, use or removal" order to the owner or custodian of any quantity of milk or cream imported, transported, or brought into this State and to hold the same at a designated place when the Commissioner of Agriculture finds that said milk or cream does not meet the requirements of the provisions of this Article or the rules and regulations promulgated thereunder, until the law has been complied with and said milk or cream is released in writing by the Commissioner of Agriculture or said violation has been otherwise legally disposed of by written authority or by written order by the Commissioner of Agriculture directing the owner or custodian to remove the milk or cream from the State. The Commissioner of Agriculture shall release the milk or cream so withdrawn from the sale when the requirements of the provisions of this Article and the rules and regulations promulgated thereunder have been complied with and upon payment by the out-of-state shipper of all costs and expenses incurred in connection with the withdrawal. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31 of each year. All authority vested in the Commissioner of Agriculture by virtue of the provisions of this Article may, with like force and effect, be executed by such employees and agents of the Commissioner of Agriculture as may, from time to time, be designated by him for such purpose. The Commissioner of Agriculture or his duly authorized agent shall have free access at all reasonable hours to any dairy, milk-processing plant, distributing plant or any establishment, depot, tank, truck or vehicle which contains milk for the purpose of inspecting any milk or cream, containers, or any other establishment or device pertaining to the transportation, the distribution, bottling or storage of milk or cream for the purpose of determining whether any of the provisions of this Article or of the rules and regulations promulgated thereunder have been violated, and the Commissioner of Agriculture may secure samples of specimens of any such milk or cream after paying or offering to pay for such sample.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State the Commissioner of Agriculture may issue to permit holders, or nonpermit holders upon payment of a permit fee of twenty-five dollars ($25.00), temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area or to a particular city or to a particular market or markets in accordance with such regulations as the Commissioner of Agriculture may prescribe for each temporary permit. (1949, c. 822.)

§ 106-266.3. Power to make rules and regulations. — The Board of Agriculture is authorized to make such regulations not in conflict with this Article as shall be necessary to make the provisions of this Article effective and insure the proper enforcement of same, and a violation of such regulations shall be deemed a violation of this Article. (1949, c. 822.)

§ 106-266.4. Penalty for violation. — Any person, firm, association or corporation found guilty by a competent court of violating any of the provisions of this Article shall be guilty of a misdemeanor and upon plea of guilty or conviction shall be fined not to exceed fifty dollars ($50.00) for the first offense and for each subsequent offense shall be fined or imprisoned in the discretion of the court. (1949, c. 822.)

§ 106-266.5. Exemption clause. — The provisions of this Article shall not be construed as extending to or applying to evaporated milk, powdered whole milk, powdered skimmed milk, or cream used for manufacturing purposes. Out-of-state dairy farms producing milk for North Carolina plants under a permit from, and in accordance with the local health regulations of the county or city to which milk is being delivered, may be exempted from the provisions of this Article at the discretion of the Commissioner of Agriculture. (1949, c. 822.)

ARTICLE 28B.

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

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-266.6. Definitions. — As used in this Article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) "Affiliate" means any person and/or subsidiary thereof, who has, either directly or indirectly, actual control or legal control over a distributor, whether by stock ownership or any other manner.

(2) "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

(3) "Commission" means the North Carolina Milk Commission created by this Article.

(4) "Distributor" or "subdistributor" means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the State of North Carolina, but shall not mean any distributor who sells 25 gallons or less of milk per day which is produced on his own farm:

a. Persons, irrespective of whether any such person is a producer:
   1. Who pasteurize or bottle milk or process milk into fluid milk;
   2. Who sell and/or market fluid milk at wholesale or retail:
      I. To hotels, restaurants, stores or other establishments for consumption on the premises,
      II. To stores or other establishments for resale, or
      III. To consumers;
   3. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

b. Persons wherever located or operating, whether within or without the State of North Carolina, who purchase, market or handle milk for resale as fluid milk in the State.

(5) "Health authorities" includes the Department of Human Resources, the State Department of Agriculture, the Commissioner of Agriculture, and the local health authorities.
(6) "Licensee" means a licensed milk distributor.
(7) "Market" means any city, town, or village of the State, or any two or more cities and/or towns and/or villages and surrounding territory designated by the Commission as a natural marketing area.
(8) "Milk" means the lacteal secretion obtained by the milking of one or more cows and reconstituted milk products derived from the recombining of dry milk solids, evaporated or condensed milk with water, and which is pasteurized, standardized or otherwise processed with a view of selling it as fluid milk in its several forms, whether cultured or with added bacteria or other ingredients, regardless of grade or fat content, including whole milk, lowfat milk, cream, chocolate milk, plain buttermilk, cream buttermilk, skim milk, special or premium milk, flavored milk or drinks, concentrated milk, sterile milk, dietary modified milk, liquid milk shake mix, half and half, eggnog, other milk-cream mixtures and the milk portion of any imitation milk. Said term excludes the lacteal secretion of one or more dairy cows where the secretion is to be sold for any other purpose.
(9) "Person" means any person, firm, corporation or association.
(10) "Producer" means any person, irrespective of whether such person is a member of a producer association or a distributor, who operates to produce milk for sale as fluid milk in the State.
(11) "Sanitary regulations" includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State Sanitary Code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.
(12) "Subdistributor" as distinguished from a "distributor" means one who does not process milk but purchases its milk from a licensed distributor for distribution.
(13) "Subsidiary" means any person or officer over whom or which a distributor or an affiliate of a distributor has, or several distributors have either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner. (1953, c. 1338, s. 1; 1971, c. 779, s. 1; 1973, c. 476, s. 128; 1977, c. 426, s. 1.)

Editor's Note. — The 1977 amendment rewrote subdivision (8).

Some cases cited under the provisions of this Article were decided prior to the revision of this Article by Session Laws 1971, c. 779.

The Milk Commission has no regulatory authority except such as is conferred upon it by this Article. In re Arcadia Dairy Farms, Inc., 289 N.C. 456, 223 S.E.2d 323 (1976).

No Conflict with Federal Law. — There is no conflict between the North Carolina Milk Commission law and regulations and the federal procurement statute, nor is there conflict with the Capper-Volstead Act. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Regulations. — Control over the business of producing or dealing in milk and milk products is within the police power of the State, and reasonable regulation of the industry does not violate the constitutional right of equal protection. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

Cited in Halsey v. Choate, 27 N.C. App. 49, 217 S.E.2d 740 (1975).

§ 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.

(c) The Commission is hereby authorized and empowered to employ an administrator and such other personnel, including but not limited to, the services of any agency or agencies, either inside or outside the State, as may be deemed necessary in assembling information on costs and other factors needed to carry out the provisions of this Article.

(d) The compensation for members of the Commission shall be set by the Governor with the approval of the Advisory Budget Commission. Members of the Commission shall also be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(e) The compensation of the administrator shall be set according to law.

(f) All sums required for the operation of the Commission — salaries, per diem, and expenses — shall be paid out of special assessments collected from producers and distributors as set forth in G.S. 106-266.11.

(g) Six members of the Commission shall constitute a quorum.

(h) The Commission may call upon the Commissioner of Agriculture, the Director of Agricultural Research, the Director of the Agricultural Extension Service, or any other agency or department of the State for such information or services as such agency or department can provide, and such agency or department shall furnish such information or services, without compensation therefor, as in its opinion is practicable.

(i) The Commission shall, subject to the limitations herein contained and the rules and regulations of the Commission, enforce the provisions of this Article; but no official act shall be taken, rule or regulation be promulgated, or official order be made or enforced, with respect to the provisions of this Article without the due approval of the Commission.

(j) The Commission shall, by rule or otherwise, fix the time for holding regular meetings. The chairman, or any two members of the Commission, may at any time call a special meeting of the Commission. Such call shall designate the time and place of the meeting, and shall give not less than five days' written notice to each member by first-class mail to the address designated for said member on the records of the Commission. Notice of special meeting shall be signed by the person or persons calling the meeting and shall give a brief description of the business to be considered at said meeting. In addition, a special meeting of the Commission may be held at any time or place, either within or without the State, with the unanimous consent of all members of the Commission.

(k) The principal office of the Commission shall be in the City of Raleigh, North Carolina, in rooms assigned by the Department of Administration. (1953, c. 1338, s. 2; 1955, c. 406, ss. 2, 3; c. 1287, s. 1; 1965, c. 213; 1971, c. 779, s. 1; 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, s. 3, provides:

"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."

State Government Reorganization. — The Milk Commission was transferred to the Department of Commerce by § 143A-182, enacted by Session Laws 1971, c. 864.

The purpose of the act creating the Milk Commission was to protect the public interest in a sufficient, regularly flowing supply of wholesome milk and, to that end, to provide a fair price to the milk producer for his product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.8. Powers of Commission. — The Commission is hereby declared to be an instrumentality of the State of North Carolina, vested with power:

(1) To confer with the legally constituted authorities of other states of the United States, with a view of securing a uniformity of milk control, with respect to milk coming into the State of North Carolina and going out of the said State in interstate commerce, with a view of accomplishing the purpose of this Article, and to enter into a compact or compacts for such uniform system of milk control.

(2) To investigate all matters pertaining to the production, processing,

storage, distribution, and sale of milk for consumption in the State of North Carolina.

(3) To supervise and regulate the transportation, processing, storage, distribution, delivery and sale of milk for consumption; provided that nothing in this Article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce nor the power to prohibit or restrict the admission of new producers. To classify milk on the basis of use or form; to adopt or approve base plans for allocating classes of milk and to provide for the pooling on a market-wide or statewide plan the total utilization of licensed distributors, or may assign base and/or milk in order to obtain the highest utilization possible for producers and/or associations of producers supplying milk to the market; and the Commission may provide for an equalization payment in order that producer milk will not be paid for in a lower class through the recombining of water and milk constituents.

(4) To act as mediator or arbiter in any controversial issue that may arise among or between milk producers and distributors as between themselves, or that may arise between them as groups.

(5) To cause examination into the business, books, and accounts of any milk producer, association of producers or milk distributors, their affiliates or subsidiaries; to issue subpoenas to milk producers, associations of producers, and milk distributors, and require them to produce their records, books, and accounts; to subpoena any other person from whom information is desired.

(6) To take depositions of witnesses within or without the State. Any member of the Commission or any employee of the Commission, so designated, may administer oaths to witnesses and sign and issue subpoenas.

(7) To make, adopt, and enforce all rules, regulations and orders necessary to carry out the purposes of this Article. Every rule, regulation and order of the Commission shall be posted for inspection in the main office of the Commission. A certified copy of all general administrative rules and regulations or rules of practice and procedure shall be filed with the Attorney General as required by Chapter 150A of the General Statutes, and a certified copy thereof shall likewise be mailed in a sealed envelope, with postage prepaid, to all licensed distributors and associations of producers in the State. Such filing and mailing shall constitute due and sufficient notice to all persons affected by such rule, regulation or order. An order which applies only to a person or persons named therein shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, with postage prepaid, to each person affected thereby, or in the case of a corporation, to any officer or agent of the corporation upon whom legal process may be served.

(8) The operation and effect of any provision of this Article conferring a general power upon the Commission shall not be impaired or qualified by the granting to the Commission by this Article of a specific power or powers.

(9) The Commission shall not exercise its power in any market until a public hearing has been held for such market, and the Commission determines that it will be to the public interest that it shall so exercise its power in such market. The Commission may, on its own motion, call such a hearing, and shall call such a hearing upon the written application of a producers' association organized under the laws of the State,

supplying in the judgment of the Commission, a substantial proportion of the milk consumed in such market, but if no such producers' organization exists on said market, the Commission shall call such hearing upon the written application of producers supplying a substantial proportion of the milk consumed in said market; and shall call such hearing upon the written application of distributors, distributing a substantial proportion of the milk consumed in such market. Such hearing may be held at the time and place and after such notice as the Commission may determine.

The Commission may withdraw the exercise of its powers from any market after a public hearing has been held for such market, and the Commission determines that it will be to the public interest to withdraw the exercise of its powers from such market.

(10) a. The Commission, after investigation and public hearing, may fix prices to be paid producers and/or associations of producers by distributors in any market or markets, and may also fix different prices for different grades or classes of milk.

b. The Commission, after investigation and public hearing and finding as a fact that it is in the public interest, may fix the maximum and minimum wholesale and retail prices to be charged for milk in any market area by any person subject to this section and may fix different prices for different grades or classes of milk. The Commission may take into consideration the type of service rendered, the quantity delivered and the cost of the container.

c. Prices fixed under this subdivision (10) shall not become effective until 10 days after the mailing of notice of the action of the Commission. Prices fixed under b above shall remain in effect for at least 30 days and until the Commission finds it is in the public interest to remove said prices.

d. In determining the reasonableness of prices to be paid or charged in any market, the Commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operating, processing, storage and delivery charges, the prices of other foods and other commodities, and the welfare of the general public. The Commission may adopt a formula incorporating such of these economic factors as well as other pertinent economic factors relevant to the production of milk which will determine automatically the prices to be paid producers or associations of producers by distributors in any market or markets, and then provide for the periodic automatic readjustment of such prices according to the result obtained by the use of this formula. Public hearings shall be held for adoption, or amendment of the formula itself, but shall not be required for price adjustments which are made based upon use of the formula.

e. In establishing producer prices for milk moving into other states, the Commission shall consider prevailing producer prices established by state or federal authority in such states.

(11) The Commission may require all distributors in any market designated by the Commission to be licensed by the Commission for the purpose of carrying out the provisions of this Article. One who purchases milk from a licensed distributor for the purpose of retail sales shall not be required to be licensed hereunder. The Commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing, whenever said applicant or licensee shall have violated the regulations adopted by the Commission or failed

to comply with the requirements of this Article 28B, or upon any of the following grounds:

a. Where the distributor has failed to account and make payment for any milk purchased or received on consignment or otherwise from a producer or association of producers, or has, if a subdistributor, failed to account and make payment for any milk purchased or received on consignment or otherwise from a distributor; provided, however, that it be shown there was reasonable cause for any such failure to account and make payment, and that such accounting and payment can and will be made promptly, the Commission shall not suspend or revoke a license solely for such failure until a reasonable opportunity has been afforded to make such accounting and payment.

b. Where the applicant or distributor has made a general assignment for the benefit of creditors, or has been adjudged a bankrupt or there has been entered against him a judgment upon which an execution remains wholly or partly unsatisfied, or where it is shown that the applicant or distributor has insufficient financial responsibility, personnel or equipment properly to conduct the milk business.

c. Where the applicant or distributor has engaged in a course of action such as to satisfy the Commission of an intent on his part to deceive or defraud customers, producers or consumers.

d. Where the applicant or distributor has failed to maintain such records as are required by the rules and regulations of the Commission or has failed to furnish the statements or information required by the Commission under this Article 28B or has kept false records or furnished false statements with respect to such information.

e. Where the applicant or distributor has rejected, without reasonable cause, any milk purchased from a producer, or has refused to accept, without either reasonable cause or reasonable advance notice, milk delivered by or on behalf of a producer in ordinary continuance of a previous course of dealing, except when the contract has been lawfully terminated.

In any case where the Commission shall suspend a license, the Commission may, in its discretion, accept from the licensee an offer in compromise of not less than fifty dollars ($50.00) and not more than five thousand dollars ($5,000) as a penalty in lieu of such suspension, and thereupon rescind the suspension. All receipts from such penalties shall be paid by the Commission to the State Treasurer for disposition in the same manner as assessments, as provided by G.S. 106-266.12. The Commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a market or markets within the State of North Carolina.

(12) Any member of the Commission, or any person designated for the purpose, shall have access to, and may enter at all reasonable hours, all places where milk is processed, stored, bottled or manufactured into food products. Any member of the Commission or designated employee shall have the power to inspect and copy books and records in any place within the State for the purpose of ascertaining facts to enable the Commission to administer this Article. The Commission may combine such information for any market or markets and make it public.

(13) The Commission may define after a public hearing what shall constitute a natural-market area and define and fix limits of the milk shed or territorial area within which milk shall be produced to supply

any such market area: Provided, that producers, producer-distributors or their successors now shipping milk to any market may continue to do so until they voluntarily discontinue shipping to the designated milk market.

(14) Each licensee shall from time to time, as required by the Commission, submit verified reports containing such information as the Commission may require. (1953, c. 1338, s. 3; 1955, c. 1287, s. 2; 1959, c. 1292; 1963, c. 797, ss. 1-3; 1965, c. 936, s. 1; 1971, c. 779, s. 1; 1973, c. 811; c. 1331, s. 3; 1975, c. 69, s. 4; 1977, c. 426, ss. 2, 3; c. 629.)

Editor's Note. — The first 1977 amendment added the second sentence of subdivision (3) and added the second and third sentences of paragraph d of subdivision (10).

The second 1977 amendment substituted "Attorney General" for "Secretary of State and with each clerk of the superior court" in the third sentence of subdivision (7).

Former Provisions Held Constitutional. — See State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

Regulation of Milk Prices. — The Commission was established as a State agency to protect the interest of the public in a regularly flowing supply of wholesome milk and is authorized, for that purpose, and that purpose only, to regulate, under proper circumstances and to a proper degree, the price of milk. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

The Fourteenth Amendment to the Constitution of the United States does not forbid a state to confer upon an administrative agency the power to fix minimum and maximum retail prices to be charged for the sale of milk in grocery stores to consumers for the purpose of assuring the steady flow of an adequate supply of clean, wholesome milk from the producing farms to the consumer. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Regulation and Fixing of Transportation Rates. — See State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

An order of the Milk Commission pursuant to this section prescribing a uniform hauling charge per cwt. upon all producers delivering milk to a certain distributor, regardless of the distance or route, is not arbitrary or discriminatory and is relevant to the legislative purpose of the Milk Commission Act. It does not deny a producer the equal protection of the laws or deprive him of property without due process of law, even though he is subject under the regulation to a higher charge than he was under a former system, and does not violate former N.C. Const., Art. I, §§ 17 and 37 (see now Art. I, §§ 19 and 29), nor the Fourteenth Amendment to the federal Constitution. State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

Neither N.C. Const., Art. I, § 32, nor Art. I, § 19, forbids the legislature of this State to confer upon the Milk Commission authority to fix a uniform rate for the transportation of milk from the farm to the processing plant so as to enable the producers of milk to secure a fair price for their product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Regulation of Competition among Retail Grocery Stores Not Intended. — The Milk Commission was not established as an agency to regulate competition among retail grocery stores per se. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Sections of Milk Marketing Order No. Two Held Constitutional. — Sections IV-A-1, IV-B-2, IV-C-1, IV-C-2, IV-E-1A, V-C-2, and V-C-4 of Milk Marketing Order No. Two of the North Carolina Milk Commission were held not to constitute a burden on interstate commerce, conflict with federal regulation of interstate commerce as provided in the Capper-Volstead Act, deny equal protection of the law and due process of law, or impair the obligations of contract. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Cited in Biltmore Co. v. Hawthorne, 32 N.C. App. 733, 233 S.E.2d 606 (1977).

§ 106-266.9. Distributors to be licensed; prices and practices of distributors regulated. — No distributor in a market in which the provisions of this Article are in effect shall buy milk from producers, or others, for sale within the State, or sell or distribute milk within the State, unless such distributor is duly licensed under the provisions of this Article. It shall be unlawful for a distributor to buy from or sell milk to a distributor who is not licensed as required by this Article. It shall be unlawful for any distributor to deal in, or handle milk if such

distributor has reason to believe that the milk has been previously dealt in, or handled, in violation of the terms and provisions of this Article. No distributor shall violate the prices as established by or filed with the Commission or offer any discounts or rebates without authority from the Commission; and the Commission may prohibit such practices as it may deem to be contrary to the welfare of the public and the dairy industry, such as the use of special prices or special inducements in any form or any unfair trade practices in order to vary from the established prices. The Commission may require each distributor to file with the Commission one complete schedule of his wholesale and retail prices for each marketing area and may require each distributor to charge his posted prices for all sales and to give 10 days' notice by certified mail to the Commission and every licensed distributor in each marketing area affected prior to the effective date of any changes in said posted prices. The requirements as to filing price schedules shall not apply to retail stores the principal business of which is selling other than dairy products and which do not maintain or control directly or indirectly a milk processing plant. The Commission may prohibit a distributor from selling or offering for sale milk in any market or county at prices less than the prices filed for the market or county in which such distributor's processing or bottling plant is located, except in such cases as such sales may be made at a lower price or prices in good faith to meet competition. (1953, c. 1338, s. 4; 1955, c. 406, s. 4; 1963, c. 797, ss. 2, 4, 4½; 1971, c. 779, s. 1.)

Cited in In re Arcadia Dairy Farms, Inc., 289 N.C. 456, 223 S.E.2d 323 (1976).

§ 106-266.10. Licenses for distributors and subdistributors. — An application to the Commission for a license to operate as a distributor or subdistributor shall be made by mail or otherwise within 30 days after the provisions of this Article become effective in a market, and as to any distributor or subdistributor thereafter beginning business, before such distributor or subdistributor shall begin such business therein. The application shall be made on blanks furnished by the Commission for that purpose. Each distributor shall cooperate with the Commission in seeing to it that its subdistributors are informed concerning, and comply with, the provisions of this Article and the rules and regulations duly adopted by the Commission. (1953, c. 1338, s. 5; 1971, c. 779, s. 1.)

§ 106-266.11. Annual budget of Commission; collection of monthly assessments. — The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the distributors in the form of monthly assessments. The assessments so levied shall not exceed four cents (4¢) per 100 pounds of milk handled. One half of any such assessment shall be deducted from funds owed to a producer or any association of producers. (1953, c. 1338, s. 6; 1971, c. 779, s. 1.)

§ 106-266.12. Milk Commission Account; deductions by distributor from funds owed to producer. — All receipts from assessments collected under this Article shall be paid by the Commission to the State Treasurer and shall be placed by the State Treasurer in a general fund to the credit of an account to be known as the "Milk Commission Account" and such an amount as may be necessary, and no more, is hereby appropriated out of this Milk Commission Account, for the payment of all expenses incurred by the Commission in administering and enforcing this Article. The Commission shall require a distributor to make such deductions from funds owed to a producer as authorized by the producer. (1953, c. 1338, s. 7; 1971, c. 779, s. 1.)

§ 106-266.13. Injunctive relief. — In the event of violation of any provisions

of this Article, or order promulgated under the provisions thereof, in addition to any other remedy, the Commission may apply to any court of record in the State of North Carolina for relief by injunction, if necessary, to protect the public interest without being compelled to allege or prove that any adequate remedy at law does not exist. (1953, c. 1338, s. 10; 1971, c. 779, s. 1.)

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.14. Penalties. — Any person violating any provisions of this Article, or order promulgated under the provisions thereof, or of any license issued by the Commission shall be guilty of a misdemeanor and may be prosecuted and punished therefor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100.00), or by imprisonment in the county jail for not less than 30 days nor more than one year, or by both fine and imprisonment, and each day during which such violation shall continue shall be deemed a separate violation. Prosecutions for violations of this Article shall be instituted by the Attorney General or otherwise, in any county or city of the State of North Carolina in which such violations occur. (1953, c. 1338, s. 11; 1971, c. 779, s. 1.)

§ 106-266.15. Appeals. — (a) Any person aggrieved by an order of the Commission revoking or suspending the license of a distributor or producer-distributor, or refusing to grant a license or to reissue a license or to transfer a license from one person to another, or by any action, rule, regulation, or order of the Commission applying only to a particular person (as distinguished from rules and regulations of general application), may have such order reviewed upon appeal to the superior court as provided in this subsection (a). Any such aggrieved person may within 40 days after the effective date of such action, rule, regulation, or order, appeal therefrom to the superior court. No such appeal shall act as a supersedeas except on a special order of the superior court allowing a supersedeas. Before the expiration of 40 days, such an aggrieved person shall file written notice of appeal with the Commission and within 10 days after receipt of said written notice of appeal, it shall be the duty of the Commission to certify a complete record of its proceedings with all papers or evidence to the clerk of the superior court of the county in which the appellant resides or to the clerk of the superior court of the county in which the violation occurred. The cause shall be entitled "State of North Carolina on Relation of the North Carolina Milk Commission v. (here insert name of appellant)," and said cause shall be placed on the civil docket of the superior court of said county and shall be heard de novo under the same rules and regulations as are prescribed for the trial of other civil causes. The Commission shall be deemed to be a party plaintiff on such appeal and at its request may present its contentions, make arguments, and take any other legal steps that a party to a civil action may take in the superior court, including the right to appeal to the Court of Appeals.

(b) The provisions of Chapter 150A of the General Statutes of North Carolina relating to "Judicial Review of Decisions of Certain Administrative Agencies" shall apply to appeals or petitions for judicial review by any person or persons aggrieved by an order of the Commission, fixing, revising or amending the price at or the terms upon which milk may be bought or sold, or by an order promulgating rules and regulations affecting the milk industry as a whole, or by any other order, action, rule, or regulation of the Commission of general application. In the event more than one person files a petition for judicial review of the same order, action, rule, or regulation, the cases shall be consolidated for hearing in the superior court. (1953, c. 1338, s. 12; 1969, c. 44, s. 67; 1971, c. 779, s. 1; 1973, c. 1331, s. 3.)

Right of Appeal and Hearing De Novo. — A person aggrieved by a decision of the Commission in North Carolina has a right of appeal and to be heard de novo in the superior court. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

A sedulous protection against abuse of power by the Milk Commission is provided in this section, which requires that when an appeal is taken from an order of the Milk Commission, the proceeding shall be heard de novo in the superior court. State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

Cited in Arcadia Dairy Farms, Inc. v. North Carolina Milk Comm'n, 289 N.C. 472, 223 S.E.2d 333 (1976).

§ 106-266.16. Saving clause. — No provisions of this Article shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto. (1953, c. 1338, s. 13; 1971, c. 779, s. 1.)

§ 106-266.17. Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws. — The making of marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this Article shall not be deemed a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this Article, be considered illegal or in restraint of trade. All laws and clauses of laws in conflict with the provisions of this Article are hereby repealed to the extent necessary for the full operation of this Article. No provisions of this Article shall be deemed in conflict with Articles 28 and 28A of Chapter 106 of the General Statutes. No provisions of this Article shall be deemed in conflict with the authority granted to county, city-county and district boards of health by G.S. 130-19, 130-20, 130-66, to make and enforce rules and regulations governing milk sanitation or with the authority granted to the Department of Human Resources by G.S. 130-3 to make sanitary inquiries and investigations. (1953, c. 1338, s. 14; 1971, c. 779, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — The reference to G.S. 130-3 appears to be an error. A reference to § 130-11 may have been intended.

§ 106-266.18. Limitations upon power of Commission. — Nothing in this Article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers, nor the power to restrict the marketing area of any producer, except as provided in G.S. 106-266.8(3). (1953, c. 1338, s. 14½; 1971, c. 779, s. 1; 1977, c. 426, s. 4.)

Editor's Note. — The 1977 amendment added "except as provided in G.S. 106-266.8(3)" to the end of the section.

§ 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.

For comment on this section, particularly as to its constitutionality, see 33 N.C.L. Rev. 524 (1955).

Constitutionality. — The provisions of this section making proof of the sale of milk by a retailer below cost prima facie evidence of a purpose to injure, harass or destroy competition in the marketing of milk, is not beyond the constitutional power of the legislature. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

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).

§§ 106-266.20, 106-266.21: Repealed by Session Laws 1971, c. 779, s. 1.

ARTICLE 29.

Inspection, Grading and Testing Milk and Dairy Products.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other

Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-267. Inspection, grading and testing dairy products. — The State Board of Agriculture shall have full power to make and promulgate rules and regulations for the Department of Agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this State; to regulate the manner of testing the same and the handling, treatment and sale of milk and dairy products, and to promulgate such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the Commissioner of Agriculture on this subject. (1933, c. 550, ss. 1-3; 1951, c. 1121, s. 1.)

Cited in In re Arcadia Dairy Farms, Inc., 289 N.C. 456, 223 S.E.2d 323 (1976).

§ 106-267.1. License required; fee; term of license; examination required. — Every person who shall test milk or cream in this State by, or sample milk for, the Babcock method or otherwise for the purpose of determining the percentage of butterfat or milk fat contained therein, where such milk or cream is bought and paid for on the basis of the amount of butterfat contained therein, shall first obtain a license from the Commissioner of Agriculture. Any person applying for such license or renewal of license shall make written and signed application on blanks to be furnished by the Commissioner of Agriculture. The granting of a license shall be conditioned upon the passing by the applicant of an examination, to be conducted by or under the direction of the Commissioner of Agriculture. All licenses so issued or renewed shall expire on December 31 of each year, unless sooner revoked, as provided in G.S. 106-267.3. A license fee of two dollars ($2.00) for each license so granted or renewed shall be paid to the Commissioner of Agriculture by the applicant before any license is granted. (1951, c. 1121, s. 1; 1959, c. 707, s. 5.)

§ 106-267.2. Rules and regulations. — The Commissioner of Agriculture shall establish and promulgate rules and regulations not inconsistent with this Article that shall govern the granting of licenses under this Article and shall establish and promulgate rules and regulations not inconsistent with this Article that shall govern the manner of testing, including, but not in limitation thereof, the taking of samples, location where the testing of said samples shall be made and the length of time samples of milk or cream shall be held after testing. (1951, c. 1121, s. 1.)

§ 106-267.3. Revocation of license; hearing. — The Commissioner of Agriculture shall have power to revoke any license granted under the provisions of this Article, upon good and sufficient evidence that the provisions of this Article or the rules and regulations of the Commissioner of Agriculture are not being complied with: Provided, that before any license shall be revoked, an opportunity shall be granted the licensee, upon being confronted with the evidence, to show cause why such license should not be revoked. (1951, c. 1121, s. 1.)

§ 106-267.4. Representative average sample; misdemeanor, what deemed. — In taking samples of milk or cream from any milk can, cream can or any

container of milk or cream, the contents of such milk can, cream can, or container of milk and cream shall first be thoroughly mixed either by stirring or otherwise, and the sample shall be taken immediately after mixing or by any other method which gives a representative average sample of the contents, and it is hereby made a misdemeanor to take samples by any method or to fraudulently manipulate such samples so as not to give an accurate and representative average sample where milk or cream is bought or sold and where the value of said milk or cream is determined by the butterfat contained therein. (1951, c. 1121, s. 1.)

§ 106-267.5. Standard Babcock testing glassware; scales and weights. — In the use of the Babcock test all persons shall use the "standard Babcock testing glassware, scales, and weights." The term "standard Babcock testing glassware, scales and weights" shall apply to glassware, scales and weights. It shall be unlawful for any person, firm, company, association, corporation or agent thereof to falsely manipulate, underread or overread the Babcock test or any other contrivance used for determining the quality of value of milk or cream where the value of said milk or cream is determined by the percentage of butterfat contained in the same or to make a false determination by the Babcock test or otherwise, or to falsify the record of such test or to pay on the basis of any test, measurement or weight except the true test, measurement or weight. (1951, c. 1121, s. 1.)

§ 106-268. Definitions; enforcement of Article. — The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in Article 12 of Chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this Article and section.

The term "adulteration" means:

(1) Failure to meet definitions and standards as established by the Board of Agriculture.
(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.
(3) If any substance has been substituted wholly or in part thereof.
(4) If it is adjudged to be unfit for human consumption.

The term "misbranded" means:

(1) If its labeling is false or misleading in any particular.
(2) If it is offered for sale under the name of another dairy product or frozen dessert.
(3) If it is sold in package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

The Department of Agriculture, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department of Agriculture, acting through its

duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this Article or of this section have been violated, or whenever a duly authorized agent of the Department of Agriculture has cause to believe that any milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with microorganisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labeling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this Article or section not in compliance with this Article or section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of the Department of Agriculture, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this Article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this Article or section. In the event any "stop-sale" order shall be issued under the provisions of this Article or section, the agents, inspectors or representatives of the Department of Agriculture shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this Article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1951, c. 1121, s. 1.)

§ 106-268.1. Penalties. — Any person, firm or corporation violating any of the provisions of this Article, or any of the rules, regulations or standards promulgated hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars ($100.00) and the cost of prosecution, or by imprisonment in the county

jail for a period of not more than two months, or both such fine and imprisonment in the discretion of the court. (1951, c. 1121, s. 1.)

ARTICLE 30.

Board of Crop Seed Improvement.

§ 106-269. Creation and purpose. — There is hereby created a Board of Crop Seed Improvement. It shall be the duty and function of this Board, in cooperation with the Agricultural Experiment Station of North Carolina State College of Agriculture and Engineering, and the Seed Testing Division of the North Carolina Department of Agriculture, to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. (1929, c. 325, s. 1; 1955, c. 330, s. 1.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see § 116-2.

§ 106-270. Board membership. — The Board of Crop Seed Improvement shall consist of the Commissioner of Agriculture, the Dean of the School of Agriculture, President of the North Carolina Foundation Seed Producers Incorporated, and the Director of Research of the School of Agriculture of North Carolina State College of Agriculture and Engineering, the Head of the Seed Testing Division of the North Carolina Department of Agriculture, and the President of the North Carolina Crop Improvement Association. (1929, c. 325, s. 2; 1955, c. 330, s. 2.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see § 116-2.

§ 106-271. Powers of Board. — The said Board shall have control, management and supervision of the production, distribution and certification of purebred crop seeds under the provisions of this Article. (1929, c. 325, s. 3.)

§ 106-272. Cooperation of other departments with Board; rules and regulations; fees for certification. — Insofar as any of the State departments or agencies shall have to do with the testing, development, production, certification and distribution of farm crop seeds, such departments or agencies shall actively cooperate with the said Board in carrying out the purposes of this Article. The said Board shall have authority to make, establish and promulgate all needful rules and regulations, including rules and regulations fixing fees for certification and fixing the market price of certified seed, necessary for the proper exercise of the duties conferred upon said Board and for the carrying out the full purposes of this Article. (1929, c. 325, s. 4.)

§ 106-273. North Carolina Crop Improvement Association. — For the purpose of carrying out more fully the provisions of this Article and of fostering the development, certification and distribution of pure seeds the said Board shall have authority to promote the organization and incorporation of an association of farmers to be known as the North Carolina Crop Improvement Association, which said Association when so organized and incorporated shall, subject to the rules and regulations prescribed by said Board, adopt all necessary rules and regulations and collect from their members such fees as shall be necessary for the proper functioning of such organizations. (1929, c. 325, s. 5.)

State Government Reorganization. — The Board of Crop Seed Improvement was transferred to the Department of Agriculture by § 143A-64, enacted by Session Laws 1971, c. 864.

§ 106-274. Certification of crop seeds. — For the purposes of this Article the certification of crop seeds hereunder shall be defined to be a guarantee by the North Carolina Crop Improvement Association herein provided for that the said seed conform to the stated origin, adaptation, variety name, variety purity, quality, germination, seed purity, and any other qualification necessary for the determining of the proper quality or value of crop seed. (1929, c. 325, s. 6.)

§ 106-275. False certification of purebred crop seeds made misdemeanor. — It shall be a misdemeanor, punishable by fine or imprisonment in the discretion of the court, for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of certification, such as a blue tag or the word "certified" or both, on any package of seed, tubers, plants, or plant parts, nor shall the word "certified" be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propagation shall have been duly inspected and certified by the agency of certification provided for in this Article, or by a similar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1.)

§ 106-276. Supervision of certification of crop seeds. — Certification of crop seeds shall be subject to the supervision of the Board of Crop Seed Improvement. The North Carolina Crop Improvement Association is recognized as the official agency for seed certification. (1929, c. 325, s. 7; 1955, c. 330, s. 3.)

ARTICLE 31.

North Carolina Seed Law.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-277. Purpose. — The purpose of this Article is to regulate the labeling, possessing for sale, sale and offering or exposing for sale of agricultural seeds, vegetable seeds and screenings; to prevent misrepresentation thereof; and for other purposes. (1963, c. 1182.)

Protective Purpose of Article. — This Article has declared the policy of North Carolina to be one of protecting the farmer from the disastrous consequences of planting seed of one kind, believing he is planting another and from the consequences of the sale and delivery to farmers of seed falsely labeled. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

This Article is not limited in its purpose or scope to the protection of the purchaser from fraud by the immediate vendor. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

The North Carolina Seed Law is aimed at protecting farmers by strict labeling, quality control inspections and branding regulations. The seed law has no effect on a nonconflicting disclaimer which governs activity beyond its scope. Billings v. Joseph Harris Co., 27 N.C. App. 689, 220 S.E.2d 361 (1975), aff'd, 290 N.C. 502, 226 S.E.2d 321 (1976).

This Article is not a safety statute, therefore evidence of a violation of it is not necessarily evidence of negligence. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

Applied in Gore v. George J. Ball, Inc., 10 N.C. App. 310, 178 S.E.2d 237 (1971).

§ 106-277.1. Short title. — This Article shall be known by the short title of "The North Carolina Seed Law of 1963." (1941, c. 114, s. 1; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.2. Definitions. — As used in this Article, unless the context clearly requires otherwise:

(1) The term "advertisement" means all representations, other than those required on the label, disseminated in any manner or by any means, relating to seed within the scope of this Article.

(2) The term "agricultural seeds" shall include the seed of grass, forage, cereal, fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the Commissioner determines that such seed is being used as agricultural seed.

(3) The term "Board" means the North Carolina Board of Agriculture as established under G.S. 106-2.

(4) The terms "certified seeds," "registered seeds" or "foundation seeds" mean seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official seed-certifying agency.

(5) The term "clone" means all the individuals derived by vegetative propagation from a single, original individual.

(6) The term "code designation" means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who labels seeds, as required in this Article in G.S. 106-277.5(10).

(7) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.

(8) The term "date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(9) The term "dealer" or "vendor" shall mean any person, not classified as a grower, who buys, sells or offers for sale any seed for seeding purposes and shall include any person who has seed grown under contract for resale for seeding purposes.

(10) The term "germination" means the percentages by count of seeds under consideration, determined to be capable of producing normal seedlings in a given period of time and under normal conditions.

(11) The term "grower" shall mean any person who produces seed, directly as a landlord, tenant, sharecropper or lessee, which are offered or exposed for sale.

(12) The term "hard seeds" means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the normal period of germination.

(13) The term "hybrid" means the first generation seed of a cross produced by controlling cross-fertilization and combining (i) two or more inbred lines or clones, or (ii) one or more inbred lines or clones with an open-pollinated variety, or (iii) two or more varieties or species, clonal or otherwise, except open-pollinated varieties of normally cross-fertilized species. The second-generation or subsequent-generation seed from such crosses shall not be designated as hybrids. Hybrid designations shall be treated as variety names.

(14) The term "inbred line" means a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines or their genetic equivalent.

(15) The term "in bulk" refers to loose seed in bins, or open containers, and not to seed in bags or packets.

(16) The term "inert matter" means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, stones and other substances

found not to be seed when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.

(17) The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, wheat, striate lespedeza, alfalfa, tall fescue.

(18) The term "labeling" includes all labels and other written, printed or graphic representations in any manner whatsoever accompanying and pertaining to any seed whether in bulk or in containers and includes representations on invoices.

(19) The term "lot" means a definite quantity of seed, identified by a lot number or other identification, which shall be uniform throughout for the factors which appear on the label.

(20) The term "mixture" means seeds consisting of more than one kind or kind and variety, each present in excess of five per centum (5%) of the whole.

(21) The term "North Carolina seed analysis tag" shall mean the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the Commissioner.

(22) "Noxious-weed seeds" shall be divided into two classes:

a. "Prohibited noxious-weed seeds" are the seeds of weeds which, when established on the land, are highly destructive and are not controlled in this State by cultural practices commonly used, and shall include any crop seed found to be harmful when fed to poultry or livestock.

b. "Restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used.

(23) The term "official certifying agency" means

a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified, or

b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifiying agencies under a.

(24) The term "origin" means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown.

(25) The term "other crop seeds" means seeds of kinds or varieties of agricultural or vegetable crops other than those shown on the label as the primary kind or kind and variety.

(26) The term "person" shall include any individual, partnership, corporation, company, society or association.

(27) The term "processing" means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

(28) The term "pure seed" means agricultural or vegetable seeds, exclusive of inert matter, weed seeds and all other seeds distinguishable from

the kind or kind and variety being considered when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.

(29) The term "purity" means the name or names of the kind, type or variety and the percentage or percentages thereof, the percentage of other crop seed; the percentage of weed seeds, including noxious-weed seeds; the percentage of inert matter; and the name and rate of occurrence of each noxious-weed seed.

(30) The terms "recognized variety name" and "recognized hybrid designation" mean the name or designation which was first assigned the variety or hybrid by the person who developed it or the person who first introduced it for production or sale after legal acquisition. Such terms shall be used only to designate the varieties or hybrids to which they were first assigned.

(31) The term "screenings" includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.

(32) The term "seed offered for sale" means any seed or grain, whether in bags, packets, bins or other containers, exposed in salesrooms, storerooms, warehouses or other places where seed is sold or delivered for seeding purposes, and shall be subject to the provisions of the seed law, unless clearly labeled "not for sale as seed."

(33) The term "seizure" means a legal process carried out by court order against a definite amount of seed.

(34) The term "stop-sale" means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.

(35) The term "treated" means given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom, or to improve the planting value of the seed.

(36) The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.

(37) The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this State.

(38) The term "weed seeds" means the seeds, bulblets or tubers of all plants generally recognized as weeds within this State or which may be classified as weed seed by regulations promulgated under this Article.

(39) The term "wholesaler" shall mean a dealer engaged in the business of selling seed to retailers or jobbers as well as to consumers.

(40) "Blend" — A mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same "blend" designation; and for which research data supports an advantage of the "blend" over the singular use of either component variety. "Blend" designations shall be treated as variety names.

(41) "Brand" — An identifying numeral, letter, word, or any combination of these, used with the word "brand" to designate source of seeds. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725; 1953, c. 856, ss. 1-3; 1963, c. 1182; 1971, c. 637, s. 1.)

Quoted in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.3. Label or tag requirements generally. — Each container of agricultural and vegetable seeds which is sold, offered or exposed for sale, or transported within or into this State for seeding purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the information required under G.S. 106-277.4 through 106-277.7, which information shall not be modified or denied in the labeling or on another label attached to the container. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

Indictment for Sale of Improperly Labeled Seed. — See same catchline under § 106-277.9.

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.4. Labels for treated seeds; coloring of seeds treated with poisonous substance. — (a) All seeds which are treated, as defined in this Article, shall be labeled to show the following information on a separate label, or on the same label as used for other information (purity, germination, etc.) required by this Article, or on the container of seed.

(1) A word or statement in type no smaller than eight points indicating that the seed has been treated.

(2) The commonly accepted coined, chemical (generic) or abbreviated chemical name of a substance or a description of any process (other than application of a substance) used in such treatment in type no smaller than eight points.

(3) A caution statement if the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals.

(4) All seeds treated with a poisonous substance, if the amount remaining with the seed is in excess of a tolerance recognized by the U.S. Department of Agriculture, or treatment for which no tolerance or exemption from tolerance is recognized by the U.S. Department of Agriculture, shall be conspicuously colored to prevent their subsequent inadvertent use for purposes other than for seeding.

(b) Seed treated with a mercurial or similarly toxic substance, if any amount remains with the seed, shall be labeled to show a statement such as "Poison," "Poison Treated," or "Treated with Poison." The word "Poison" shall be in type no smaller than eight points and shall be in red letters on a distinctly contrasting background. In addition, the label shall show a representation of a skull and crossbones at least twice the size of the type used for the word "Poison" and the statement indicating that the seed has been treated.

(c) Seed treated with other harmful substances (other than mercurials or similarly toxic substances), if the amount remaining with the seed is harmful to humans or other vertebrate animals, shall be labeled to show the word "Caution" in red letters in type no smaller than eight points, followed by the statement "Do not use for food, feed, or oil" in type no smaller than eight points. Seed treated with substances other than mercurials or similarly toxic substance in containers of four ounces or less need not be labeled to show the caution statement.

(d) Seed commingled with treated seed shall be labeled "Treated," and the percentage of treated seed and the substance used shall be stated.

(e) If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration) shall be declared on the label. (1963, c. 1182; 1971, c. 637, s. 2.)

§ 106-277.5. Labels for agricultural seeds. — Agricultural seeds sold, offered or exposed for sale, or transported for sale within this State shall be labeled to show the following information:

(1) The commonly accepted name of the kind and the variety, or kind and the phrase "variety not stated" for each agricultural seed component, in excess of five percent (5%) of the whole, and the percentage by weight of each in order of its predominance. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label. Second generation from hybrid seeds, if sold, shall be labeled "second generation (of the parent), variety not stated." "F" designations on labels, unless used as a part of a variety name, will refer only to size and shape of corn seeds.

(2) Lot number or other lot identification.

(3) Net weight.

(4) Origin, if known. If the origin is unknown, the fact shall be stated.

(5) Percentage by weight of inert matter.

(6) Percentage by weight of agricultural seeds and/or vegetable seeds (which shall be designated as "other crop seeds") other than those named on the label. Different varieties of the same kind of seed, when in quantities of less than five percent (5%) will be considered as other crop seed.

(7) Percentage by weight of all weed seeds, including noxious-weed seeds.

(8) For each named agricultural seed:

a. Percentage of germination, exclusive of hard seed.

b. Percentage of hard seeds, if present.

c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

(9) The name and number per pound of each kind of restricted noxious-weed seed present.

(10) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 3.)

§ 106-277.6. Labels for vegetable seeds in containers of one pound or less. — Labels for vegetable seeds in containers of one pound or less shall show the following information:

(1) Name of kind and variety of seed.

(2) Origin, for pepper seed in containers of one ounce or more. If unknown, so stated.

(3) The year for which the seed is packed, provided the words "packed for" shall precede the year, or the percentage of germination, month and year tested.

(4) For seeds which germinate less than the standards last established by the Commissioner and approved by the Board of Agriculture under the Article:

a. Percentage of germination, exclusive of hard seed.

b. Percentage of hard seed, if present.

c. The calendar month and year the test was completed to determine such percentage.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

d. The words "Below Standard" in not less than eight-point type.

(5) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 4.)

Cited in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.7. Labels for vegetable seeds in containers of more than one pound. — Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

(1) The name of each kind and variety present in excess of five percent (5%) and the percentage by weight of each in order of its predominance.

(2) Lot number or other lot identification.

(3) Origin, for snap bean and pepper seed only. If unknown, so stated.

(4) For each named vegetable seed:

a. The percentage of germination exclusive of hard seed.

b. The percentage of hard seed, if present.

c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

(5) Net weight, except when in bulk as defined in this Article.

(6) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.

(7) No tag or label shall be required, unless requested, on seeds sold directly to and in the presence of the purchaser and taken from a bag or container properly labeled. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 5.)

§ 106-277.8. Responsibility for presence of labels. — (a) The immediate vendor of any lot of seed which is sold, offered or exposed for sale shall be responsible for the presence of the labels required to be attached to any lots of seed whether he is offering for sale or selling seed which bears labels of a previous vendor, with or without endorsement, or bears his own label.

(b) The labeler of any original or unbroken lot of seed shall be responsible for the presence of and the information on all labels attached to said lot of seed at the time he sells or offers for sale such lot of seed. (1963, c. 1182.)

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.9. Prohibitions. — It shall be unlawful for any person:

(1) To transport, to offer for transportation, to sell, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:

a. Unless a seed license has been obtained in accordance with the provisions of this Article.

b. Unless the test to determine the percentage of germination required by G.S. 106-277.5 through 106-277.7 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation; provided, the North Carolina Board of Agriculture may adopt after a public hearing, following public notice, rules and regulations to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials (hermetically sealed), and under such other conditions prescribed, that will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

c. Not labeled in accordance with the provisions of this Article or having a false or misleading labeling or claim.

d. Pertaining to which there has been a false or misleading advertisement.

e. Consisting of or containing prohibited noxious-weed seeds.

f. Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this Article.

g. Containing weed seeds in excess of two percent (2%) by weight unless otherwise provided in rules and regulations promulgated under this Article.

h. That have been treated and not labeled as required in this Article, or treated and not conspicuously colored.

i. Pepper seed in containers holding one ounce or more of seed, not produced in the arid regions of the western United States, unless treated in accordance with a procedure approved by the North Carolina Commissioner of Agriculture and labeled to reflect the procedure used.

j. To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.

k. Represented to be certified, registered or foundation seed unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency.

l. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this Article.

m. Unless it conforms to the definition of a "lot."

n. Any variety, hybrid or blend of seeds not recorded with the Commissioner as required under rules and regulations promulgated pursuant to this Article.

o. Seed of any variety or hybrid that has been found by official variety tests to be inferior, misrepresented or unsuited to conditions within the State. The Commissioner may prohibit the sale of such seed by and with the advice of the director of research of the North Carolina agricultural experiment station.

p. Using a designation on seed tag in lieu of the full name and address of the person who labels or tags seed unless such designation qualifies as a code designation under this Article.

q. By variety name seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

r. That employ a brand name on the label unless a variety or mixture of varieties is labeled as required in this Article. If a brand name other than a registered trademark is used, it must be a separate statement from the variety name or the statement of a mixture, or blend, of genetic variations.

s. Labeled as a "blend" unless the lot complies with the definition of "blend" in G.S. 106-277.2, and is registered with the Commissioner, as may be required in G.S. 106-277.9(1)n. Other mechanical combinations of varieties shall be labeled as a mixture according to the requirements in G.S. 106-277.5(1).

(2) To transport, offer for transportation, sell, offer for sale or expose for sale seeds, whole grain and screenings not for seeding purposes unless labeled "not for seeding purposes."

(3) To detach, alter, deface or destroy any label provided for in this Article or the rules and regulations promulgated thereunder, or to alter or substitute seed in any manner that defeats the purposes of this Article.

(4) To disseminate false or misleading advertisement in any manner concerning agricultural seeds, vegetable seeds or screenings.

(5) To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his lawful duties.

(6) To fail to comply with or to supply inaccurate information in reply to a stop-sale order; or to remove tags attached to or to remove or dispose of seed or screenings held under a stop-sale order unless authorized by the Commissioner.

(7) To use the name of the Department of Agriculture or the results of tests and inspections made by the Department for advertising purposes.

(8) To use the words "type" or "trace" in lieu of information required by G.S. 106-277.4 through 106-277.7.

(9) To label and offer for sale seed under the scope of this Article without keeping complete records as specified in G.S. 106-277.12. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 4; 1957, c. 263, s. 2; 1959, c. 585, s. 2; 1963, c. 1182; 1971, c. 637, s. 6.)

Indictment for Sale of Improperly Labeled Seed. — An indictment under this section charging the sale or offering for sale of seed not labeled in accordance with § 106-277.3 should allege the person to whom defendant sold or offered to sell seed not properly labeled, or that the purchaser was in fact unknown, the particulars in which the label failed to meet the statutory requirements, and where and how the seed was exposed to sale. State v. Bissette, 250 N.C. 514, 108 S.E.2d 858 (1959).

An indictment under this section charging that defendant sold or offered for sale tobacco seed having a false or misleading label should allege the person to whom the seed was sold or offered for sale or that the purchaser was in fact unknown, and the intent to defraud. State v. Bissette, 250 N.C. 514, 108 S.E.2d 858 (1959).

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.10. Exemptions. — (a) When the required analysis and other information regarding the seed is present on a seedman's label or tag which bears an official North Carolina seed stamp or is accompanied by the North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis," the provisions of G.S. 106-277.5 through 106-277.7 shall be deemed to have been complied with.

(b) The official tag or label of the North Carolina Crop Improvement Association shall be considered an "official North Carolina seed analysis tag" when attached to containers of seed duly certified by the said Association or when it refers to an accompanying tag which carries the same information required in G.S. 106-277.5 to 106-277.7 and when fees applicable to the North Carolina seed analysis tag have been paid to the Commissioner.

(c) The label requirements for peanuts, cotton and tobacco seed may be limited to:

(1) Lot number or other identification.
(2) Origin, if known. If unknown, so stated.
(3) Commonly accepted name of kind and variety.
(4) Name and number per pound of noxious-weed seeds.
(5) Percentage of germination with month and year of tests.
(6) Name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

(d) The provisions of G.S. 106-277.3 through 106-277.7 do not apply:

(1) To seed or grain sold or represented to be sold for purposes other than for seeding provided that said seed is labeled "not for seeding purposes" and that the vendor shall make it unmistakably clear to the purchaser of such seed or grain that it is not for seeding purposes.
(2) To seed for processing when consigned to, being transported to or stored in an approved processing establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for processing" and provided further that other labeling or representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this Article.
(3) To seed sold by a farmer grower to a seed dealer or processor, or to seed in storage in or consigned to a seed-cleaning or processing plant; provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this Article.
(4) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, processing or marketing agricultural or vegetable seeds or screenings subject to provisions of this Article.

(e) No person shall be subject to the penalties of this Article for having sold, offered or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to origin, kind or variety when such seeds cannot be identified by examination thereof unless such person has failed to obtain an invoice or grower's declaration giving origin, kind and variety or to take such other precautions as may be necessary to insure the identity to be that stated. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

Exemptions under this section are to be strictly construed. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

Exemption Does Not Apply to Breach of Contract. — Exemptions from the penalties imposed by this Article are not intended to absolve the vendor from liability to the purchaser for breach of contract. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

Mislabeled Seed. — The failure of a seed company to notify a customer, after receiving complaints from other customers that tomato seeds delivered to the customer were mislabeled, did not constitute negligence where the evidence disclosed that the defendant kept no records of the particular source of seed used to fill a given order, there being no duty to maintain such records, and defendant being unable to notify the customer in the absence of such data. Gore v. George J. Ball, Inc., 10 N.C. App. 310, 178 S.E.2d 237 (1971).

§ 106-277.11. Disclaimers, nonwarranties and limited warranties. — The use of a disclaimer, nonwarranty or limited warranty clause in any invoice, advertising [or] written, printed or graphic matter pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution or in any proceedings for confiscation of seeds brought under the provisions of this Article or rules and regulations made and promulgated thereunder. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

Effect of Warranty Limitation. — The provision of this section barring a defense based on a warranty limitation clause in any prosecution or in any proceedings for confiscation of seeds, does not have any bearing upon any other effect of such disclaimer or limitation clause. Gore v. George J. Ball, Inc., 179 N.C. 192, 182 S.E.2d 389 (1971).

Warranty Limitation Does Not Bar Recovery of Full Damages. — The phrase, "to the extent of the purchase price," used in a limitation of warranty, relied on by the seller of mislabeled seed, is contrary to the public policy of this State as declared in this Article and is invalid. Such a provision, even if it otherwise be deemed a part of the contract of sale, does not bar the buyer from a recovery of the full damages which he would otherwise be entitled to recover for the breach of the contract by the seller. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.12. Records. — All persons transporting or delivering for transportation, selling, offering or exposing for sale agricultural or vegetable seeds if their name appears on the label shall keep for a period of two years a file sample and a complete record of such seed, including invoices showing lot number, kind and variety, origin, germination, purity, treatment, and the labeling of each lot. The Commissioner or his duly authorized agents shall have the right to inspect such records in connection with the administration of this Article at any time during customary business hours. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.13. Tolerances to be established and used in enforcement. — Due to variations which may occur between the analyses or tests and likewise between label statements and the results of subsequent analyses and tests, recognized tolerances shall be employed in the enforcement of the provisions of this Article, except as otherwise established by appropriate rules and regulations promulgated under authority of this Article. (1963, c. 1182.)

§ 106-277.14. Administration. — The duty of enforcing this Article and its rules and regulations and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. (1963, c. 1182.)

§ 106-277.15. Rules, regulations and standards. — The Commissioner of Agriculture, jointly with the Board of Agriculture, after public hearing immediately following 10 days' public notice may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this Article, which shall have the force and effect of law. The Commissioner and Board of Agriculture shall adopt rules, regulations and standards as follows:

(1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerance to be followed in the administration of this Article.
(2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this Article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.
(3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.
(4) Declaring the maximum number of "restricted" noxious-weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale.
(5) Declaring the minimum percentage of germination permitted for sale as "Agricultural Seeds."
(6) Declaring germination standards for vegetable seeds.
(7) Prescribing the form and use of tags or stamps to be used in labeling seed.
(8) Prescribing such other rules and regulations as may be necessary to

secure the efficient enforcement of this Article. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.16. Seed-testing facilities. — The Commissioner is authorized to establish and maintain or make provision for seed-testing facilities, to employ educationally qualified persons, to make or provide for making purity and germination tests of seeds, upon request, for farmers or seedsmen, and to prescribe rules and regulations governing such testing, and to incur such expenses as may be necessary to comply with these provisions. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.17. Varieties or hybrids; registration; testing; prohibiting sale if inferior, misrepresented or unsuitable. — The Commissioner is authorized to require the registration, after field testing for performance and trueness-to-variety, of any variety or hybrid as a prerequisite to sale in this State and to promulgate rules and regulations pertaining to same. The Commissioner is further authorized to prohibit the sale of any variety or hybrid or any kind of crop, by and with the advice of the director of research of the North Carolina agricultural experiment station, that has been found by official field tests to be inferior, misrepresented or unsuited to conditions within the State. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

Editor's Note. — Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ 106-277.18. Registration and licensing of dealers. — It shall be the duty of the Commissioner and he is hereby authorized to require each seed dealer selling, offering or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes, including packet or package seeds, to register with the Commissioner and to obtain a license annually. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182.)

§ 106-277.19. Revocation or refusal of license for cause; hearing; appeal. — The Commissioner is authorized to revoke any seed license issued, or to refuse to issue a seed license to any person as hereinafter provided, upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules and regulations made and promulgated thereunder; provided that no license shall be revoked or refused until the person shall have first been given an opportunity to appear at a hearing before the Commissioner. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.20. Right of entry for purposes of inspection; duty of vendors. — For the purpose of carrying out this Article the Commissioner or his agent is authorized to enter upon any public or private premises during regular business hours in order to have access to seeds subject to his Article and the rules and regulations thereunder. It shall be the duty of the dealer or vendor to arrange seed lots so as to be accessible for inspection, and to provide such information and records as may be deemed necessary. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.21. Sampling, inspecting and testing; notice of violations. — It shall be the duty of the Commissioner, who may act through his authorized agents, to sample, inspect, make analysis of and test agricultural and vegetable seeds transported, held in storage, sold, offered or exposed for sale within this State for sowing purposes at such time and place and to such extent as he may deem necessary to determine whether said seeds are in compliance with the provisions of this Article, and to notify promptly the person or persons who transported, had in his possession, sold, offered or exposed the seeds for sale of any violation. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.22. Stop-sale orders; penalty covering expenses; appeal. — The Commissioner is authorized to issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seeds which the Commissioner, or his authorized agent, finds is in violation of any of the provisions of this Article or the rules and regulations promulgated thereunder, which order shall prohibit further sale or movement of such seed until such officer has evidence that the law has been complied with and a written release has been issued to the owner or custodian of said seed by the enforcement officer. Any person violating the labeling requirements of the law shall be subject to a penalty covering all costs and expenses incurred in connection with the withdrawal from sale and the release of said seed. With respect to seeds which have been denied sale as provided in this section, the owner, custodian or the person labeling such seeds shall have the right to appeal from such order to the superior court of the county in which the seeds are found, praying for judgment as to the justification of said order and for discharge of such seed from the order prohibiting the same in accordance with the findings of the court; and provided, further, that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this Article. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.23. Notice of violations; hearings, prosecutions or warnings. — It shall be the duty of the Commissioner to give notice of every violation of the provisions of this Article with respect to agricultural or vegetable seeds, mixtures of such seeds, or screenings to the person in whose hands such seeds or screenings are found, and to send copies of such notice to the shipper of such seed or screenings and to the person whose "analysis tag or label" is attached to the container of such seeds or screenings, in which notice he may designate a time and place for a hearing. The person or persons involved shall have the right to introduce evidence either in person or by agent or attorney. If, after hearing, or without such hearing in the event the person fails or refuses to appeal, the Commissioner is of the opinion that the evidence warrants prosecution he may institute proceedings in a court of competent jurisdiction in the locality which the violation occurred or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.24. Penalty for violations.— Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than five hundred dollars ($500.00). (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.25. Seizure and disposition of seeds violating Article. — Any lot of agricultural or vegetable seeds, mixtures of such seeds or screenings being sold, exposed for sale, offered for sale or held with intent to sell in this State contrary to the provisions of this Article shall be subject to seizure on complaint of the Commissioner to the resident judge of the superior court in the county in which the seeds, mixtures of such seeds or screenings are located. In the event the court finds the seeds or screenings to be in violation of the provisions of this Article and orders the condemnation thereof, such seeds or screenings shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided that in no instance shall such disposition be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, mixtures of such seeds or screenings with permission to process or relabel to bring them into compliance with the provisions of this Article. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.26. Publication of test results and other information. — The Commissioner is authorized to publish the results of analyses, tests, examinations, studies and investigations made as authorized by this Article, together with any other information he may deem advisable. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.27. Cooperation with United States Department of Agriculture. — The Commissioner is authorized to cooperate with the United States Department of Agriculture in seed law enforcement and testing seed for trueness as to kind and variety. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.28. Fees for tags, stamps and licenses. — For the purpose of providing a fund to defray the expense of inspection, examination, analyses of seeds and enforcement of the provisions of the Article:

(1) Each seed dealer or grower selling, offering or exposing for sale in this State any agricultural or vegetable seeds for seeding purposes shall purchase from the Commissioner for two cents (2¢) each, official North Carolina seed analysis tags or stamps and shall attach a tag (or stamp on the seedman's label) to each container holding 10 pounds or more of seed; provided, however, that a seed dealer or grower who sells only seed lots orginated by his company may request to pay these applicable fees through the reporting system prescribed in subdivision (3) hereof; provided, further, that this subdivision shall not apply to the sale of seed by a farmer who sells only seed grown on his farm and when such sales are confined to his farm.

(2) Each seed dealer selling, offering, or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes shall register with the Commissioner and shall obtain a license annually on January 1 of each year and shall pay for such license as follows:

a. Wholesale, or wholesale and retail, seed dealer in one location $25.00

b. Central office of chain stores, or wholesale cooperatives operating

within this State selling or furnishing seeds for retail . .$25.00

c. Each retailer of seeds or branch of wholesale dealer or cooperative selling seeds at different locations with sales in excess of five hundred dollars ($500.00) $15.00

d. Each retailer of seeds, including chain stores, with sales more than three hundred dollars ($300.00) but not in excess of five hundred dollars ($500.00) $10.00

e. Each retailer of seeds, including chain stores, with sales more than one hundred dollars ($100.00) but not in excess of three hundred dollars ($300.00) ..... $ 5.00

f. Each retailer of seeds, including chain stores with sales not in excess of one hundred dollars ($100.00) ..... $ 1.00

g. Each retail dealer or place of business selling only "packet" vegetable and flower seeds: one dollar ($1.00) for retail value less than one hundred dollars ($100.00); two dollars ($2.00) for the first one hundred dollars ($100.00); and two dollars ($2.00) for each one hundred dollars ($100.00) thereafter, based on commission or consignment. Containers which hold one pound or less of seed are considered packets.

(3) A seed dealer or grower who sells only seed lots originated by his company may request of the Commissioner of Agriculture authority to report the quantity of seed sold and to pay the fees applicable under G.S. 106-277.28(1) in lieu of attaching an official North Carolina tag or stamp to each container of seeds weighing 10 pounds or more.

Upon granting authority, the Commissioner of Agriculture shall require each seed dealer or grower to keep such records as may be necessary to indicate accurately the quantity of seeds and container weights sold from each distribution point in the State. Such records shall be available to the Commissioner or his duly authorized representative at any and all reasonable hours for the purpose of making such examination as is necessary to verify the quantity of seed sold and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds sold. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter, and the inspection fee shall be due and payable with the report. If the report is not filed and the inspection fee paid to the Department of Agriculture by the tenth day following the date due, or if the report of the quantity or container weights be false, the Commissioner may revoke the authority to use the reporting system. If the inspection fee is unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fee due and the Commissioner shall have authority to deduct said amount due and penalty from the cash, securities or bond which has been deposited with the Department of Agriculture.

In order to guarantee faithful performance with the provisions of this section, each seed dealer or grower, before being granted a permit to use the reporting system, shall deposit with the Commissioner cash in the amount of five hundred dollars ($500.00) or securities acceptable to the Commissioner of a value of at least five hundred dollars ($500.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182; 1969, c. 105.)

§ 106-277.29. Investigation committee; appointment; duties; authority. — (a) When any farmer believes that he has been damaged by the failure of

agricultural or vegetable seed to produce or perform as represented by the label attached to such seed as required by G.S. 106-277.3, such farmer may make a sworn complaint against the dealer from whom such seeds were purchased, alleging the damages sustained, or to be sustained, and file same with the Commissioner of Agriculture within 10 days after alleged defect or violation becomes apparent and the farmer shall send a copy of said complaint to said dealer by United States registered mail. A filing fee of ten dollars ($10.00) shall be paid to the Commissioner of Agriculture with each complaint filed. Within 10 days after receipt of a copy of the complaint, the dealer may file with the Commissioner of Agriculture his answer to said complaint and send a copy of same to the farmer by United States registered mail.

(b) Any seed dealer against whom suit is brought in any court, state or federal, by a farmer who alleges that he has been damaged by the failure of seeds purchased from a seed dealer to perform as labeled, may request an investigation by the investigating committee.

(c) The Commissioner of Agriculture shall refer the complaint and the answer thereto to the investigation committee provided in this Article for investigation, findings and recommendations on the matters complained of.

(d) The Commissioner of Agriculture shall appoint an investigation committee composed of five members, one each to be appointed upon the recommendation of the following: Director of the North Carolina Agricultural Experiment Stations, N.C. State University; Director of the North Carolina Agricultural Extension Service, N.C. State University; and President of the North Carolina Seedmen's Association. The other two members shall be appointed by the Commissioner of Agriculture. One of the members appointed by the Commissioner of Agriculture must be a farmer who is not connected in any way in selling seeds at retail or wholesale. Each member shall continue to serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairman and a secretary from its membership. It shall be the duty of the chairman to conduct all meetings and deliberations held by the committee and to direct all other activities of the committee. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the committee as directed by the chairman.

(e) The purpose of the investigation committee is to assist farmers and agricultural seed dealers in determining the facts relating to matters alleged in complaints made by farmers against dealers. The committee may recommend money damages be paid the farmer as a result of alleged failure of seeds to produce as represented by the label on the seed container.

(f) The investigation committee may be called into session by the Commissioner of Agriculture at his discretion or upon the direction of the chairman to consider matters referred to it by the Commissioner of Agriculture.

(g) When the Commissioner of Agriculture refers to the investigation committee any complaint made by a farmer against a dealer, said committee shall make a full and complete investigation of the matters complained of, and at the conclusion of said investigation, report its findings to the Commissioner of Agriculture. Upon receipt of same, the Commissioner of Agriculture shall transmit the findings and recommendations of the investigation committee to the farmer and to the dealer by United States registered mail. Neither the farmer nor the dealer shall be bound by the recommendations of the investigation committee.

(h) In conducting its investigation, the investigation committee is authorized:

(1) To examine the farmer on his farming operation of which he complains and the dealer on his packaging, labeling and selling operation of the seed alleged to be faulty;

(2) To grow to production a representative sample of the alleged faulty seed through the facilities of the State, under the supervision of the

Commissioner of Agriculture when such action is deemed by the committee to be necessary;

(3) To hold informal hearings at a time and place directed by the chairman of the committee upon reasonable notice to the farmer and the dealer;

(4) To seek evaluations from authorities in allied disciplines, when deemed necessary.

(i) The committee shall keep a record of its activities and reports on file in the North Carolina Department of Agriculture.

(j) Any investigation made by less than the whole membership of the committee shall be by authority of a written directive by the chairman and such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations. (1971, c. 637, s. 7.)

§§ 106-278 to 106-284.4: Reserved for future codification purposes.

Editor's Note. — See note to § 106-277.

ARTICLE 31A.

Seed Potato Law.

§§ 106-284.5 to 106-284.13: Repealed by Session Laws 1973, c. 294.

Editor's Note. — Repealed § 106-284.12 was amended by Session Laws 1973, c. 108, s. 55, which deleted a reference to "solicitors of inferior courts."

ARTICLE 31B.

Vegetable Plant Law.

§ 106-284.14. Title. — This Article shall be known as the "Vegetable Plant Law." (1959, c. 91, s. 1.)

Editor's Note. — Session Laws 1973, c. 1370, which extensively amended this Article, adds, in s. 8, a section designated § 106-284.23, which reads as follows:

"§ 106-284.23. If any provision of this law or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this law which can be enforced independently without any invalid provision or application and to this end the provisions of this law are declared to be severable."

§ 106-284.15. Purpose of Article. — The purpose of this Article is to improve vegetable production in North Carolina and to enable vegetable producers to secure vegetable plants for transplanting that are free from diseases and insects, and in order to prevent the spread of diseases and insects affecting the future stability of the vegetable industry and the general welfare of the public. (1959, c. 91, s. 2; 1973, c. 1370, s. 1.)

§ 106-284.16. Definitions. — For the purpose of this Article, the following terms shall be construed respectively to mean:

(1) "Certified vegetable plants for transplanting" shall mean plants which have been tagged or labeled so as to indicate that such plants have been inspected by an authorized agent of an officially recognized State inspecting or certifying agency of some state, and found to conform to the appropriate standards set by the North Carolina Board of Agriculture.

(2) "Vegetable plants" shall mean such plants as asparagus, pepper, eggplant, sweet potato, onion, cabbage and other cole crops, tomato plants, white seed potatoes and onion sets intended for transplanting

purposes and such other vegetable plants intended for transplanting purposes as the North Carolina Board of Agriculture may designate by regulation in order to protect the vegetable industry.

(3) As applied to vegetable plants "standards" include the qualities of color, freshness, firmness, strength, straightness, unbroken and undamaged condition, uniformity of size, and freedom from injurious insects, diseases, nematodes, snails, and other pests and means the standards with respect thereto as established and fixed in regulations adopted by the North Carolina Board of Agriculture. (1959, c. 91, s. 3; 1973, c. 1370, s. 2.)

§ 106-284.17. Unlawful to sell plants not up to standard and not appropriately tagged or labeled. — It shall be unlawful for any person, firm, or corporation to pack for sale, offer or expose for sale, or ship into this State any vegetable plants which do not meet the appropriate standards as set by the North Carolina Board of Agriculture and which have not been appropriately tagged or labeled as certified vegetable plants for transplanting. (1959, c. 91, s. 4; 1973, c. 1370, s. 3.)

§ 106-284.18. Rules and regulations. — The State Board of Agriculture is hereby authorized to adopt reasonable rules and regulations to carry out the intent, purposes and provisions of this Article. (1959, c. 91, s. 5; 1973, c. 1370, s. 4.)

§ 106-284.19. Inspection; interference with inspectors; "stop-sale" notice. — To enforce the provisions of this Article effectively, the Commissioner of Agriculture and his duly authorized agents are authorized to inspect vegetable plants, and may enter any place of business, warehouse, common carrier or other places where such vegetable plants are stored or being held, for the purpose of making such an inspection; and it shall be unlawful for any person, firm or corporation in custody of such vegetable plants or of the place in which the same are held to interfere with the Commissioner or his duly authorized agents in making such inspections. When the Commissioner or his authorized inspectors find vegetable plants being held, offered or exposed for sale in violation of any of the provisions of this Article or any rule or regulation adopted pursuant thereto, he may issue a "stop-sale notice" to the owner or custodian of any such vegetable plants and shall tag such plants as are in violation. It shall be unlawful for anyone after notice or receipt of such "stop-sale notice" to remove such notice from plants or from any location to which attached; or to plant, sell, give away, move or exchange for transplanting purposes any plants in respect to which such notice has been issued unless and until so authorized by the Commissioner or his agent or a court of competent jurisdiction. (1959, c. 91, s. 6; 1973, c. 1370, s. 5.)

§ 106-284.20. Interference with Commissioner, etc., or other violation a misdemeanor; penalties. — If anyone shall interfere with or attempt to interfere with the Commissioner or any of his agents, while engaged in the performance of his duties under this law or shall violate any provision of this law or any rule or regulation of the Board of Agriculture adopted pursuant to this law, he shall be guilty of a misdemeanor and shall be fined and imprisoned in the discretion of the court. Each day's violation shall constitute a separate offense. (1959, c. 91, s. 7; 1973, c. 1370, s. 6.)

§ 106-284.21. Authority to permit sale of substandard plants. — Notwithstanding any other provision of this Article, the Commissioner of Agriculture is authorized when the public necessity, welfare, economy, or any emergency situation requires it, to permit for such periods of time as, in his discretion may seem necessary, the sale of vegetable plants for transplanting

purposes which do not meet the standards referred to in G.S. 106-284.16. (1959, c. 91, s. 8.)

§ 106-284.22. When Article not applicable. — The provisions of this Article shall not apply:

(1) To the sale by a grower or retail merchant of vegetable plants grown within this State when such sale is made for home or garden or any noncommercial use; provided, however, the provisions shall apply to such sale when such plants are found to be infested with pests so that the exposure for sale or planting is deemed by the Commissioner or his agent to be a hazard to the commercial vegetable industry of North Carolina.

(2) To the sale of vegetable plants for commercial transplanting purposes in this State when grown within this State and sold by a plant producer to a planter having personal knowledge of the conditions under which such vegetable plants were grown or produced provided that such plants are transplanted within a 30-mile radius at which they were grown; but also provided, however, the provisions shall apply to such sale when such plants are found to be infested with pests so that the exposure for sale or planting is deemed by the Commissioner or his agent to be a hazard to the commercial vegetable industry of North Carolina. (1959, c. 91, s. 9; 1973, c. 1370, s. 7.)

§§ 106-284.23 to 106-284.29: Reserved for future codification purposes.

ARTICLE 31C.

North Carolina Commercial Feed Law of 1973.

§ 106-284.30. Title. — This Article shall be known as the "North Carolina Commercial Feed Law of 1973." (1973, c. 771, s. 2.)

Editor's Note. — Session Laws 1973, c. 771, s. 19, subsection (b), provides: "(b) Notwithstanding any other provisions of law, all existing rules and regulations concerning commercial feeds and canned pet foods of the North Carolina Department of Agriculture and any other agency of the State of North Carolina, not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified or amended."

§ 106-284.31. Purpose. — The purpose of this Article is to regulate the manufacture and distribution of commercial feeds in the State of North Carolina and to protect a farmer-buyer from the manufacturer-seller of concentrated, commercial feed who might sell substandard or mislabeled feedstuff, and not to protect from himself a farmer who mixes his own feed. (1973, c. 771, s. 1.)

§ 106-284.32. Enforcing official. — This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina, hereinafter referred to as the "Commissioner." (1973, c. 771, s. 3.)

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

(1) The term "Board" means the North Carolina State Board of Agriculture.

(2) The term "brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) The term "canned pet food" means any commercial feed packed in cans or hermetically sealed containers, and used or intended for use as food for pets.

(4) The term "commercial feed" means all materials, except whole unmixed seed such as corn, including physically altered entire unmixed seeds

when not adulterated within the meaning of G.S. 106-284.38(1), which are distributed for use as feed or for mixing in feed; provided, that the Board by regulation may exempt from this definition, or from specific provisions of this Article, hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances which are not intermixed or mixed with other materials, and are not adulterated within the meaning of G.S. 106-284.38(1).

(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.

(5) The term "customer-formula feed" means commercial feed, each batch of which is mixed according to the formula of the customer, furnished in writing over the signature of the customer or his designated agent with each batch moved directly from the manufacturer to the customer and not stocked or displayed in a dealer's warehouse or sales area and not resold or redistributed to any person.

(6) The term "distribute" means to offer for sale, sell, exchange, or barter, commercial feed.

(7) The term "distributor" means any person who distributes.

(8) The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

(9) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(10) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(11) The term "labeling" means all labels and other written, printed, or graphic matter (i) upon a commercial feed or any of its containers or wrapper or (ii) accompanying such commercial feed, or advertisement, brochures, posters, television and radio announcements used in promoting the sale of such commercial feed.

(12) The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(13) The term "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(14) The term "official sample" means a sample of feed taken by the Commissioner or his agent in accordance with the provisions of G.S. 106-284.42(a), (c) or (e).

(15) The terms "percent" or "percentage" means percentage by weight, except in G.S. 106-284.42 where these terms refer to the retail value of the lot of commercial feed.

(16) The term "permitted analytical variation" means allowance for the inherent variability in sampling and laboratory analysis in guaranteed components. Manufacturing variations and their effect on the guaranteed components are not included in such values.

(17) The term "person" means an individual, a partnership, a corporation, an association, and any other legal entity.

(18) The term "pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.

(19) The term "pet food" means any commercial feed prepared and distributed for consumption by pets.
(20) The term "product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.
(21) The term "specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.
(22) The term "specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.
(23) The term "ton" means a net weight of 2,000 pounds avoirdupois. (1973, c. 771, s. 4; 1975, c. 900, s. 1; c. 961, s. 1.)

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

§ 106-284.34. Registration. — (a) No person shall manufacture or distribute a commercial feed in this State, unless he has filed with the Commissioner on forms provided by the Commissioner, his name, place of business, and location of each manufacturing facility in this State, if any, and made application to the Commissioner for a permit to report the quantity of commercial feed distributed in this State.

(b) Manufacturers of registered feeds may apply for, and the Commissioner at his discretion may issue, numbered permits authorizing manufacturers of registered feeds to purchase commercial feed as defined in G.S. 106-284.33(4), and the responsibility for the payment of the inspection fee assessed by the provisions of this Article will be assumed by the purchaser to whom such permit has been issued. The Commissioner may at his discretion, and without notice, cancel any permit issued under the provision of this section. The use of permits issued under the provisions of this section shall be governed by rules and regulations promulgated by the Commissioner.

(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of one dollar ($1.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of five dollars ($5.00) for each canned pet food shall accompany each request for registration.

(d) The Commissioner is empowered to refuse registration of any commercial feed not in compliance with the provisions of this Article and to cancel any registration subsequently found not to be in compliance with any provisions of this Article: Provided, that no registration shall be refused or canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to amend his application in order to comply with the requirements of this Article.

(e) The manufacturer of commercial feed that has not been registered and is found being distributed in the State shall pay a twenty-five dollar ($25.00) delinquent registration fee in addition to the regular registration fee. (1973, c. 771, s. 5.)

§ 106-284.35. Labeling. — A commercial feed shall be labeled as follows:

(1) In case of commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:
   a. The net weight.
   b. The product name and the brand name, if any, under which the commercial feed is distributed.
   c. The guaranteed analysis stated in such terms as the Board by regulation determines is required to advise the users of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists.
   d. The common or usual name of each ingredient used in the manufacture of the commercial feed: Provided, that the Board by regulation may permit the use of collective terms for a group of ingredients which perform a similar function, or the Board may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if it finds that such statement is not required in the interest of consumers.
   e. The name and principal mailing address of the manufacturer or the person distributing the commercial feed.
   f. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the Board may require by regulations as necessary for their safe and effective use.
   g. Such precautionary statements as the Board by regulation determines are necessary for the safe and effective use of the commercial feed.

(2) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip, or other shipping document to be presented to the purchaser at time of delivery, bearing the following information:
   a. Name and address of the manufacturer.
   b. Name and address of the purchaser.
   c. Date of delivery.
   d. The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the net weight of each other ingredient used.
   e. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Board may require by regulation as necessary for their safe and effective use.
   f. Such precautionary statements as the Board by regulation determines are necessary for the safe and effective use of the customer-formula feed. (1973, c. 771, s. 6.)

§ 106-284.36. Bag weights. — All commercial feed, except that in bags or packages of five pounds or less, shall be in such standard-weight bags or packages as the Board by regulation shall prescribe. (1973, c. 771, s. 7.)

§ 106-284.37. Misbranding. — A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.
(2) If it is distributed under the name of another commercial feed.
(3) If it is not labeled as required in G.S. 106-284.35.
(4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the Board.
(5) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not

prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. (1973, c. 771, s. 8.)

§ 106-284.38. Adulteration. — A commercial feed 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 commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug and Cosmetic Act (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; or (ii) a food additive); or

c. If it is, or it bears or contains, any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act; or

d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug and Cosmetic Act; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug and Cosmetic Act 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 feed shall 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 feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a), of the Federal Food, Drug and Cosmetic Act.

e. If it is, or it bears or contains, any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug and Cosmetic Act.

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(4) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the Board to assure that the drug meets the requirements of this Article as to safety and has the identity and strength and meets the quality and purity characteristics which its purports or is represented to possess. In promulgating such regulations, the Board shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the

Federal Food, Drug and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in this State.

(5) If it contains viable weed seeds in amounts exceeding the limits which the Board shall establish by rule or regulation. (1973, c. 771, s. 9.)

§ 106-284.39. Prohibited acts. — The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

(1) The manufacture or distribution of any commercial feed that is adulterated or misbranded.
(2) The adulteration or misbranding of any commercial feed.
(3) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of G.S. 106-284.38(1).
(4) The removal or disposal of a commercial feed in violation of an order under G.S. 106-284.43.
(5) The failure or refusal to register in accordance with G.S. 106-284.34.
(6) The violation of G.S. 106-284.44(f).
(7) Failure to pay inspection fees and file reports as required by G.S. 106-284.40.
(8) The use of metal fasteners as bag fasteners or for attaching labels to the containers of commercial feed. (1973, c. 771, s. 10.)

§ 106-284.40. Inspection fees and reports. — (a) An inspection fee at the rate of two cents (2¢) for each carton of 48 cans shall be paid on canned pet food distributed in this State by the person whose name appears on the label as the manufacturing distributor or guarantor subject to (b)(1), (2), (3), and (5) of this section.

(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 minimum 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.

(c) Each person who is liable for the payment of such fee shall:

(1) File, not later than the last day of January, April, July and October of each year, a quarterly statement setting forth the the number of net tons of commercial feeds and/or cases of canned pet food distributed in this State during the preceding calendar quarter, and upon filing such statements shall pay the inspection fee at the rate stated in subsections (a) and (b) of this section. Inspection fees which are due and owing and have not been remitted to the Commissioner within 15 days following the due date shall have a penalty fee of ten percent (10%) (minimum ten dollars ($10.00)) added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the Commissioner from taking other actions as provided in this Chapter.

(2) Keep such records as may be necessary or required by the Commissioner to indicate accurately the tonnage of commercial feed distributed in this State, and the Commissioner or his duly designated agent shall have the right to examine such records during normal business hours, to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor. (1973, c. 771, s. 11; 1975, c. 900, s. 2; c. 961, s. 2.)

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

§ 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.).

(b) Before the issuance, amendment, or repeal of any rule or regulation 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 to issue the proposed rule or regulation or to amend or repeal an existing rule or regulation. The provisions of this subsection notwithstanding, if the Board pursuant to the authority of this Article, adopts the official definitions of feed ingredients or official feed terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act, any amendment or modification adopted by said Association or by the Secretary of Health, Education and Welfare in the case of regulations promulgated pursuant to the Federal Food, Drug and Cosmetic Act, shall be deemed adopted automatically under this Article without regard to the publication of the notice required by this subsection (b), unless the Board by resolution specifically determines that said amendment or modification shall not be adopted. (1973, c. 771, s. 12; 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).

§ 106-284.42. Inspection, sampling, and analysis. — (a) For the purpose of enforcement of this Article, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the Commissioner upon presenting appropriate credentials, to the owner, operator, or agent in charge, are authorized (i) to enter, during normal business hours or actual operation, any factory, warehouse, or establishment within the State in which commercial feeds are manufactured, processed, packed, or held for distribution and take samples therefrom or to enter any vehicle being used to transport or hold such feeds and take samples therefrom; and (ii) to inspect during normal business hours or while in operation, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished or unfinished materials, containers, and labeling therein. The inspection may include the verification of such records, and production and control procedures as may be necessary to determine compliance with this Article.

(b) A separate presentation of appropriate credentials shall be given for each such inspection, but a presentation shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(c) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample(s) in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample(s) obtained.

(d) If the owner of any factory, warehouse or establishment described in subsection (a), or his agent, refuses to admit the Commissioner or his agent to inspect in accordance with subsections (a) and (b), the Commissioner or his agent is authorized to obtain without notice from any district or superior court judge

within the county where the facility is located, an order directing such owner or his agent to submit the premises described in such order to inspection.

(e) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists, or in accordance with other generally recognized methods.

(f) The results of all analyses of official samples shall be forwarded by the Commissioner to the person named on the label and to the dealer. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, and upon written request within 30 days following receipt of the analysis, the Commissioner shall furnish to the registrant a portion of the sample concerned.

(g) The Commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in G.S. 106-284.33, subdivision (14), and obtained and analyzed as provided for in subsections (a), (c), and (e) of this section.

(h) The Board is authorized to adopt regulations establishing permitted analytical variation providing for reasonable deviation from the guaranteed analysis.

(i) The registrant of a commercial feed found to be in significant violative deviation from the guarantee shall be subject to a penalty for this deviation.

(j) If the analysis of a sample shows a deviation from permitted analytical variation established by the Board, the registrant or other responsible person shall be penalized according to the following schedule:

Component Deviating	*Method of Penalty Assessment*
Crude protein	Three times the relative percentage * of deviation from the guarantee times the retail value of the commercial feed.
Crude fat	Ten percent (10%) of retail value of the lot of commercial feed.
Crude fiber	Ten percent (10%) of retail value of the lot of commercial feed.
Vitamins	Ten percent (10%) of retail value of the lot of commercial feed.
Minerals	Ten percent (10%) of retail value of the lot of commercial feed.
Crude protein equivalent from nonprotein nitrogen	Ten percent (10%) of retail value of the lot of commercial feed.
Animal drugs	Twenty percent (20%) of retail value of the lot of commercial feed.
Antibiotics	Twenty percent (20%) of retail value of the lot of commercial feed.
Other analysis	Ten percent (10%) of retail value of the lot of commercial feed.

* Example, a feed guaranteed 16.0% protein and assaying only 14.0%, will be considered as 2.0%/16.0%, or 12.5% deficient in protein. The penalty will be computed as 3 x 0.125 x retail value of the feed, or 0.375 x retail value of the feed.

(k) Penalties for multiple deficiencies within a sample shall be additive; provided that in no case shall the penalty exceed the retail value of the product. The minimum penalty under any of the foregoing provisions shall be twenty-five dollars ($25.00) or the retail value of the product whichever is smaller, regardless of the value of the deficiency.

(l) Within 60 days from the date of written notice by the Commissioner or his duly designated agent to the manufacturer, guarantor, dealer or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed or canned pet food represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner of Agriculture. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner of Agriculture who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian, for the express purpose of enforcement of this Article. (1973, ch. 771, s. 13.)

§ 106-284.43. Detained commercial feeds. — (a) "Withdrawal from distribution" orders: When the Commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this Article or of any of the prescribed regulations under this Article, he may issue and enforce a written or printed "withdrawal from distribution" order, ordering the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the Commissioner or a court. The Commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within 30 days, the Commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) "Condemnation and confiscation": Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the Commissioner to the superior court in the county in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this Article, and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the State, provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this Article. All costs and expenses incurred by the Department of Agriculture in any proceedings associated with such seizure and confiscation shall be paid by the claimant. (1973, c. 771, s. 14.)

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

(b) Nothing in this Article shall be construed as requiring the Commissioner or his representative to: (i) report for prosecution, or (ii) institute seizure

proceedings, or (iii) issue a 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.

(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. Before the Commissioner reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the Commissioner or his designated agent.

(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 rule 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 Chapter 150A of the General Statutes.

(f) Any person who uses to his own advantage, or reveals to other than the Board, or officers of the other State agencies whose requests are deemed justifiable by the Commissioner, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this Article, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall be subject upon conviction to the penalties contained in subsection (a) of this section; provided, that this prohibition shall not be deemed as prohibiting the Commissioner, or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States government, or of the other states, who are similarly prohibited by law from revealing this information. (1973, c. 47, s. 2; c. 771, s. 15; c. 1331, s. 3.)

§ 106-284.45. Cooperation with other entities. — The Commissioner may cooperate with and enter into agreements with governmental agencies of this State, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this Article. (1973, c. 771, s. 16.)

§ 106-284.46. Publication. — The Commissioner shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the State as compared with the analyses guaranteed in the registration and on the label; provided, that the information concerning production and use of commercial feed shall not disclose the operations of any person. (1973, c. 771, s. 17.)

ARTICLE 32.

Linseed Oil.

§§ 106-285 to 106-302: Repealed by Session Laws 1977, c. 42.

ARTICLE 33.

Adulterated Turpentine.

§ 106-303. Sale of adulterated turpentine misdemeanor. — If any person shall adulterate or cause to be adulterated any spirits turpentine, or shall

knowingly sell or offer for sale as pure spirits turpentine any adulterated spirits turpentine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars ($50.00) or imprisoned for 30 days. (1897, c. 482; Rev., s. 3830; C. S., s. 5089.)

ARTICLE 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-304. Proclamation of livestock and poultry quarantine. — Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any and all kinds of livestock and poultry from any state where there is known to prevail contagious or infectious diseases among the livestock and poultry of such state. (1915, c. 174, s. 1; C. S., s. 4871; 1969, c. 606, s. 1.)

§ 106-305. Proclamation of infected feedstuff quarantine. — Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock and poultry as a carrier of infectious or contagious disease from any area outside the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any state or federal agency competent to make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of man, livestock and poultry. (1915, c. 174, s. 2; C. S., s. 4872; 1953, c. 1328; 1969, c. 606, s. 1.)

§ 106-306. Rules to enforce quarantine. — Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the livestock and poultry in this State. (1915, c. 174, s. 3; C. S., s. 4873; 1969, c. 606, s. 1.)

Cross Reference. — See § 106-22(3).

Cattle Ticks. — The regulation of a quarantine district laid off and enforced in pursuance of § 106-22(3), and this section, for the eradication of ticks on cattle is a reasonable and valid regulation. State v. Hodges, 180 N.C. 751, 105 S.E. 417 (1920).

§ 106-307. Violation of proclamation or rules. — Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined not in excess of five hundred dollars ($500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court. (1915, c. 174, s. 4; C. S., s. 4874; 1969, c. 606, s. 1.)

§ 106-307.1. Serums, vaccines, etc., for control of animal diseases. — The North Carolina Department of Agriculture is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal and poultry diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture. (1943, c. 640, s. 1; 1969, c. 606, s. 1.)

Editor's Note. — For comment on this section and §§ 106-307.2 to 106-307.6, see 21 N.C.L. Rev. 323.

§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian. — All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any contagious or infectious disease in livestock and poultry. (1943, c. 640, s. 2; 1969, c. 606, s. 1.)

§ 106-307.3. Quarantine of infected or inoculated livestock. — Hog cholera and other contagious and infectious diseases of livestock are hereby declared to be a menace to the livestock industry and all livestock infected with or exposed to a contagious or infectious disease may be quarantined by the State Veterinarian or his authorized representative in accordance with regulations promulgated by the State Board of Agriculture. All livestock that are inoculated with a product containing a living virus or other organism are subject to quarantine at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture: Provided, nothing herein contained shall be construed as preventing anyone entitled to administer serum or vaccine under existing laws from continuing to administer same. (1943, c. 640, s. 3; 1969, c. 606, s. 1.)

Cross Reference. — See § 106-401.

§ 106-307.4. Quarantine of inoculated poultry. — All poultry that are inoculated with a product containing a living virus or other organism capable of causing disease shall be quarantined at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture. Provided nothing herein contained shall be construed as preventing anyone entitled to administer vaccines under existing laws from continuing to administer same. (1969, c. 606, s. 1.)

Cross Reference. — See § 106-400.

Validity of Regulations. — Regulations relating to the importation of cattle, promulgated under authority of this section for the purpose of control of brucellosis or Bang's disease, if reasonable in their scope and incidence and not in conflict with federal regulations or statutes already preempting the field, are constitutional and valid. State v. Lovelace, 228 N.C. 186, 45 S.E.2d 48 (1947).

A provision in the regulations promulgated under authority of this section, limiting the exception to the requirement of a health certificate for imported cattle solely to those consigned to a slaughterhouse, is reasonable and valid. State v. Lovelace, 228 N.C. 186, 45 S.E.2d 48 (1947).

§ 106-307.5. Livestock and poultry brought into State. — All livestock and poultry transported or otherwise brought into this State shall be in compliance with regulations promulgated by the State Board of Agriculture. (1943, c. 640, s. 4; 1969, c. 606, s. 1.)

§ 106-307.6. Violation made misdemeanor. — Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-307.1 to 106-307.5 or any rule or regulation duly established by the State Board of Agriculture shall be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars ($500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court. (1943, c. 640, s. 6; 1969, c. 606, s. 1.)

Applied in State v. Lovelace, 228 N.C. 186, 45 S.E.2d 48 (1947).

§ 106-307.7. Diseased livestock running at large. — Whenever the State Veterinarian is informed or reasonably believes that certain livestock is infected with or has been exposed to any contagious or infectious disease, that such livestock is running at large and that such livestock cannot be captured with the exercise of reasonable diligence, the State Veterinarian shall have authority to direct the appropriate sheriff or other proper officer to destroy such livestock in a reasonable manner and such sheriff or other officer shall make diligent effort to destroy such livestock. (1971, c. 676.)

Part 2. Foot and Mouth Disease; Rinderpest; Fowl Pest; Newcastle Disease.

§ 106-308. Appropriation to combat animal and fowl diseases. — If the foot and mouth disease, rinderpest (cattle plague), fowl pest, or Newcastle disease (Asiatic or European types), or any other type of foreign infectious disease which may become a menace to livestock and poultry and so declared to be by the Secretary of Agriculture of the United States, Chief of the United States Bureau of Animal Industry and the Commissioner of Agriculture of North Carolina, seem likely to appear in this State and an emergency as to such disease or diseases is declared by the Secretary of Agriculture of the United States, or his authorized agents, and the North Carolina Department of Agriculture has no funds available to immediately meet the situation in cooperation with the United States Department of Agriculture, the Director of the Budget, upon approval of the Governor and Council of State, shall set aside, appropriate and make available out of the Contingency and Emergency Fund such sum as the Governor and Council of State shall deem proper and necessary, and the Budget Bureau shall place said funds in an account to be known as the Animal and Fowl Disease Appropriation and make same available to the North Carolina Department of Agriculture, to be used by the North Carolina Department of Agriculture in the work of preventing or eradicating the above diseases, or any of them. Funds from the above appropriation shall be paid only for work in this connection upon warrants approved by the Commissioner of Agriculture. The provisions of Part 4 of Article 34 of Chapter 106 of the General Statutes relating to the compensation for killing diseased animals shall be applicable to animals infected with or exposed to the diseases named and described in this section, as well as to the destruction of material contaminated by or exposed to the diseases described in this section, as well as the necessary cost of the disinfection of materials. In no event shall any of the above appropriation be spent for the purposes set forth in this section unless the funds appropriated by this State are matched in an equal amount by the federal government or one of its agencies to be spent for the same purposes. (1915, c. 160, s. 1; C. S., s. 4875; 1951, c. 799.)

Editor's Note. — All of the functions, property, records, etc., of the Budget Bureau have been transferred by § 143-344 to the Department of Administration.

§ 106-309. Disposition of surplus funds. — If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the State Treasurer shall return such part of the appropriation as is not expended to the general fund, and the Commissioner of Agriculture shall furnish the Governor an itemized statement of the money expended, and all moneys set aside out of the State funds and used for the purpose of eradicating said disease under the provisions of this Article shall be paid back to the State funds by the Department of Agriculture out of the first funds received by said agricultural Department available for such purpose. (1915, c. 160, s. 2; C. S., c. 4876.)

Part 3. Hog Cholera.

§ 106-310. Burial of hogs dying natural death required. — It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within 12 hours after the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a misdemeanor, and shall be fined not less than five dollars ($5.00) nor more than ten dollars ($10.00) for each offense, at the discretion of the court. (1915, c. 225; C. S., s. 4877.)

§ 106-311. Hogs affected with cholera to be segregated and confined. — If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them so that they shall not have access to any ditch, canal, branch, creek, river or other watercourse which passes beyond the premises of the owners of such swine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. (1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1899, c. 47; 1903, c. 106; Rev., s. 3297; 1913, c. 120; C. S., s. 4490.)

Cross Reference. — See § 106-402.

§ 106-312. Shipping hogs from cholera-infected territory. — It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a misdemeanor. (1917, c. 203; C. S., s. 4491.)

§ 106-313. Price of serum to be fixed. — The Department of Agriculture shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production. (1917, c. 275, s. 1; 1919, c. 6; C. S., s. 4878.)

Cross Reference. — As to purchase for resale by Department of Agriculture, see § 106-307.1.

§ 106-314. Manufacture and use of serum and virus restricted. — It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the State Department of Agriculture, or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the

State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be cancelled by the State Veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C. S., s. 4879; 1959, c. 576, s. 1.)

Local Modification. — Currituck: 1943, c. 199; Edgecombe: 1933, c. 139; Hyde: 1943, c. 693; Nash: 1935, cc. 67, 222; Pasquotank: 1943, c. 358; Pitt: 1935, c. 352; Tyrrell: 1943, c. 693; Wilson: 1933, c. 58.

Cross Reference. — As to purchase for resale by Department of Agriculture, see § 106-307.1.

§ 106-315. Written permit from State Veterinarian for sale, use or distribution of hog-cholera virus, etc. — No hog-cholera virus or other product containing live virus or organisms of animal diseases shall be distributed, sold, or used within the State unless permission has been given in writing by the State Veterinarian for such distribution, sale, or use, said permission to be cancelled by the State Veterinarian when he deems same necessary. (1939, c. 360, s. 5; 1959, c. 576, s. 2.)

Local Modification. — Currituck: 1943, c. 199; Hyde: 1943, c. 693; Pasquotank: 1943, c. 358; Tyrrell: 1943, c. 693.

§ 106-316. Counties authorized to purchase and supply serum. — If the county commissioners of any county in the State deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the State Department of Agriculture sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the State Veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (1919, c. 132; C. S., s. 4881.)

§ 106-316.1. Purpose of §§ 106-316.1 to 106-316.5. — It is the purpose and intent of G.S. 106-316.1 to 106-316.5 to safeguard the swine industry in North Carolina through a program designed to prevent the spread of hog cholera by prohibiting and restricting the use of virulent hog-cholera virus; to provide for the use of modified live virus hog-cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture; to empower the State Board of Agriculture to establish rules and regulations and the Commissioner of Agriculture to establish emergency rules and regulations governing the movement of hogs into the State from other states and within the State; to establish rules and regulations designating the minimum dosage of anti-hog-cholera serum and antibody concentrate that shall be used in combination with modified live-virus hog-cholera vaccines on swine vaccinated at public livestock markets and other places; and to establish such other rules and regulations and emergency rules

and regulations as may be necessary for carrying out the purposes of G.S. 106-316.1 to 106-316.5. (1955, c. 824, s. 1; 1959, c. 576, s. 3.)

Editor's Note. — Section 106-316.5, referred to above, was repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-316.2. Use of virulent hog-cholera virus prohibited without permit; virulent hog-cholera virus defined; use of modified live virus vaccines. — Notwithstanding any other provision of the law, either general, public-local, special or private, and except as herein provided, the possession, sale and use of virulent hog-cholera virus in North Carolina is hereby prohibited. Virulent hog-cholera virus referred to in this section means any unattended hog-cholera virus collected directly or indirectly from blood or other tissues of swine infected with hog cholera which has not been licensed as a modified live virus hog-cholera vaccine. The State Veterinarian may issue a permit authorizing the sale, possession and use of virulent hog-cholera virus only for the purpose of laboratory diagnosis; official research programs; production of anti-hog-cholera serum, antibody concentrate, modified live virus, killed virus vaccine, and similar biological products; and following a declaration that a state of emergency exists in a designated quarantined hog-cholera area or areas within the State by the Commissioner of Agriculture of North Carolina. The use of virulent hog-cholera virus during a declared state of emergency shall be under the direct supervision of the State Veterinarian or his authorized representative. Modified live-virus hog-cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture may be sold and used in compliance with the General Statutes of North Carolina and the rules, regulations, definitions and standards adopted by the North Carolina Board of Agriculture and the emergency rules and regulations established by the Commissioner of Agriculture. (1955, c. 824, s. 2; 1959, c. 576, s. 4.)

§ 106-316.3. Unlawful to import hogs inoculated with virulent virus; exceptions for immediate slaughter; health certificate and permit required. — It shall be unlawful to bring hogs into North Carolina that have been inoculated with virulent hog-cholera virus less than 30 days prior to the date of entry, except for immediate slaughter, and in addition thereto the transportation or importation of such hogs that have been inoculated with virulent hog-cholera virus must be accompanied by the health certificate and permit as required by the rules and regulations of the North Carolina Board of Agriculture or emergency rules and regulations of the North Carolina Commissioner of Agriculture. The provisions of this section shall not be construed to be in conflict with or to repeal any provisions of G.S. 106-317 through 106-322 or any other statute or rule or regulation prohibiting, restricting or controlling the interstate movement of hogs for other reasons. (1955, c. 824, s. 3; 1959, c. 576, s. 5.)

§ 106-316.4. Penalties for violation of §§ 106-316.1 to 106-316.5. — Any person, firm or corporation violating the provisions of G.S. 106-316.1 to 106-316.5 shall be guilty of a misdemeanor, and upon the first conviction shall be fined not less than fifty dollars ($50.00) or imprisoned in the discretion of the court. For a second offense, any such violator shall be fined not less than two hundred dollars ($200.00) or imprisoned in the discretion of the court, or both. (1955, c. 824, s. 4.)

Editor's Note. — Section 106-316.5, referred to above, was repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-316.5: Repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-317. Regulation of the transportation or importation of hogs and other livestock into State. — To prevent the spread of hog cholera, vesicular exanthema, vesicular stomatitis, foot-and-mouth disease, or any other contagious, infectious and communicable swine disease in North Carolina, the North Carolina Board of Agriculture is authorized and empowered to promulgate rules and regulations governing the transportation and importation of swine into North Carolina from any other state or territory: Provided, that following a proclamation by the Secretary of Agriculture of the United States and the Commissioner of Agriculture of North Carolina that a state of emergency exists, arising from the existence of a dangerous contagious and infectious disease of livestock which threatens the livestock industry of the country, the North Carolina Commissioner of Agriculture is empowered and authorized to immediately promulgate emergency rules and regulations governing the movement of swine and other livestock within the State and prohibiting, restricting and/or controlling the transportation and importation of swine and other livestock into North Carolina for the duration of the emergency. The emergency rules and regulations promulgated by the North Carolina Commissioner of Agriculture shall be subject to approval, disapproval or change at the next regular or special meeting of the North Carolina Board of Agriculture. The North Carolina Board of Agriculture under the authority of this section may by regulation establish a system of health certificates and permits for the better protection of the swine and livestock of this State. (1941, c. 373, s. 1; 1955, c. 424, s. 1.)

§ 106-318. Issuance of health certificates for swine and livestock; inspection. — Such health certificates that may be required under the rules and regulations by the Board of Agriculture or the emergency rules and regulations of the Commissioner of Agriculture shall be issued by a State, federal or duly licensed veterinarian in the state of origin certifying that the swine or other livestock transported and imported are healthy and not infected with or exposed to a contagious, infectious or communicable swine or other livestock disease, and all permits required under such rules and regulations shall be in possession of the owner or agent in charge, at all times until delivery of such swine or other livestock, and upon request, the owner or agent in charge shall produce said required certificate and permit for inspection by any police or peace officer or inspection agent of this State or any county thereof. The burden shall be on the person transporting said swine or other livestock to prove the origin, identity and destination of such swine and other livestock. (1941, c. 373, s. 2; 1955, c. 424, s. 2.)

§ 106-319. Burial of hogs and other livestock dying in transit. — It shall be the duty of any owner or agent having in charge any swine or other livestock imported or transported into this State who shall, before delivery lose a hog or other livestock from natural or unnatural death to have the same delivered to a rendering plant or buried in the area to a depth of at least two feet within 12 hours after death of said swine or other livestock. (1941, c. 373, s. 3; 1955, c. 424, s. 3.)

§ 106-320: Repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-321. Penalties for violation. — Any person, firm or corporation who shall violate any provision set forth in this Article or any rule or regulation duly established by the State Board of Agriculture or emergency rules and regulations established by the Commissioner of Agriculture shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1941, c. 373, s. 5; 1955, c. 424, s. 4.)

§ 106-322. Effect of §§ 106-317 to 106-322. — Sections 106-317 to 106-322 shall not repeal Article 34, Chapter 106, but shall be complementary thereto. (1941, c. 373, s. 6.)

§ 106-322.1. State-federal hog-cholera cooperative agreements; establishment of hog-cholera eradication areas. — The Commissioner of Agriculture is authorized to enter into cooperative State-federal agreements with the United States Department of Agriculture for the purpose of State-federal programs for the control and eradication of hog cholera. The Commissioner of Agriculture may designate individual counties or two or more counties as hog-cholera eradication areas. (1963, c. 1084, s. 1.)

§ 106-322.2. Destruction of swine affected with or exposed to hog cholera; indemnity payments. — If it appears in the judgment of the State Veterinarian to be necessary for the control and eradication of hog cholera to destroy or slaughter swine affected with or exposed to such disease, the State Veterinarian is authorized to order said swine destroyed or slaughtered, notwithstanding the wishes of the owners of said swine, provided that if the owner contests the diagnosis of hog cholera he shall be entitled to a review of the case by a licensed practicing veterinarian, the State Veterinarian, or his authorized representative, and the federal inspector in charge, or his authorized representative, to determine that a diagnosis of hog cholera was arrived at by the use of accepted, standard diagnostic techniques. The State Veterinarian is authorized to agree on the part of the State, in the case of swine destroyed or slaughtered on account of being affected with hog cholera or exposure to same to pay one half of the difference between the appraised value of each animal destroyed or slaughtered and the value of the salvage thereof; provided, that the State indemnity shall not be in excess of the indemnity payments made by the federal cooperating agency; provided further, that State indemnity payments shall be restricted to swine located on the farm or feedlot of the owner or authorized representative of the owner; provided further, that in no case shall any payments by the State be more than twenty-five dollars ($25.00) for any grade swine nor more than one hundred dollars ($100.00) for any purebred swine and subject to available State funds. The procedure for appraisal, disposal and salvage of slaughtered or destroyed swine shall be carried out in the same manner as that required under the General Statutes of North Carolina governing compensation for killing other diseased animals provided, however, that the appraisal may be made by the owner, or his representative, and the State Veterinarian, or his authorized representative, when agreement on the appraised value of the swine can be made; provided, further, that swine which entered the State 30 days or more before developing symptoms of hog cholera may be appraised in the same manner as swine which originate in North Carolina.

For the purposes of this section, "purebred swine" shall mean any swine upon which a certificate of pure breeding has been issued by a purebred swine association, or swine not more than 12 months of age eligible to receive such a certificate. (1963, c. 1084, s. 1; 1967, c. 105; 1969, c. 525, ss. 1, 2.)

§ 106-322.3. When indemnity payments not to be made. — No payments shall be made for any swine slaughtered in the following cases:

(1) If the owner does not clean up and disinfect premises as directed by an inspector of the Animal Health Division, Agricultural Research Service, United States Department of Agriculture or the State Veterinarian or his authorized representative;

(2) Where the owner has not complied with the livestock disease control laws and regulations applicable to hog cholera;

(3) For swine in a herd in which hog-cholera vaccine has been used illegally on one or more animals in the herd;

(4) Swine involved in an outbreak in which the existence of hog cholera has not been confirmed by the State Veterinarian or his authorized representative;
(5) Swine belonging to the United States or the State of North Carolina;
(6) Swine brought into the State in violation of State laws or regulations;
(7) Swine which the claimant knew to be affected with hog cholera, or had notice thereof, at the time they came into his possession;
(8) Swine which have not been within the State of North Carolina for at least 30 days prior to discovery of the disease;
(9) Where the owner does not use reasonable care in protecting swine from exposure to hog cholera;
(10) Where the owner has failed to submit the reports required by the United States and North Carolina Departments of Agriculture for animals on which indemnity is paid under Article 34;
(11) Swine purchased by a buying station for slaughter which are not slaughtered within 10 days of purchase. (1969, c. 525, s. 2½.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. State to pay part of value of animals killed on account of disease; purchase by State of animals exposed to certain diseases. — If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and paratuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the State Veterinarian is authorized, within his discretion, to agree on the part of the State, in the case of cattle destroyed for Bang's disease and tuberculosis, and paratuberculosis to pay one third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the State be more than twenty-five dollars ($25.00) for any grade animal nor more than one hundred dollars ($100.00) for any purebred animal; provided further, that the State indemnity shall not be in excess of the indemnity payments made by the federal government. In the case of horses or mules destroyed for glanders, to pay one half of the appraised value, said half not to exceed one hundred dollars ($100.00).

The State Veterinarian is also authorized, in his discretion, and subject to the maximum payment hereinabove provided, to purchase in the name of the State, cattle which have been exposed to Bang's disease, tuberculosis or paratuberculosis and horses and mules which have been exposed to glanders. (1919, c. 62, s. 1; C. S., s. 4882; 1929, c. 107; 1939, c. 272, ss. 1, 2; 1969, c. 525, s. 3; 1973, c. 1122.)

Cross References. — As to indemnity for swine destroyed on account of being affected by hog cholera, see § 106-322.2. As to provision that failure to kill animal affected with glanders constitutes a misdemeanor, see § 106-404.

§ 106-324. Appraisal of cattle affected with Bang's disease and tuberculosis. — Cattle affected with Bang's disease and tuberculosis and paratuberculosis shall be appraised by three men — one to be chosen by the owner, one by the United States Bureau of Animal Industry, and one by the State Veterinarian. If the United States Bureau of Animal Industry is not represented, then the appraisers shall be chosen, one by the owner, one by the State Veterinarian, the third by the first two named. The finding of such appraisers shall be final. (1919, c. 62, s. 2; C. S., s. 4883; 1929, c. 107; 1939, c. 272, s. 1.)

§ 106-325. Appraisal of animals affected with glanders; report. — Animals affected with glanders shall be appraised by three men — one to be chosen by the owner, one to be chosen by the State Veterinarian, the third to be named

by the first two chosen, the finding of such appraisers to be final. The report of appraisal to be made in triplicate on forms furnished by the State Veterinarian, and a copy sent to the State Veterinarian at once. (1919, c. 62, s. 3; C. S., s. 4884.)

§ 106-326. Report of appraisal of cattle affected with Bang's disease and tuberculosis to State Veterinarian; contents. — Appraisals of cattle affected with Bang's disease or tuberculosis shall be reported on forms furnished by the State Veterinarian, which shall show the number of animals, the appraised value of each per head, or the weight and appraised value per pound, and shall be signed by the owners and the appraisers. This report must be made in triplicate and a copy sent to the State Veterinarian: Provided, that the State Veterinarian may change the forms for making claims so as to conform to the claim forms used by the United States Department of Agriculture. (1919, c. 62, s. 4; C. S., s. 4885; 1939, c. 272, ss. 1, 3.)

§ 106-327. Marketing of cattle affected with Bang's disease and tuberculosis. — Each owner of cattle affected with Bang's disease or tuberculosis, which have been appraised, and which have been authorized by the State Veterinarian to be marketed, shall market the cattle within 30 days and shall obtain from the purchaser a report in triplicate. One copy to be sent by the State Veterinarian at once, certifying as to the amount of money actually paid for the animals, all animals to be identified on report. (1919, c. 62, s. 5; C. S., s. 4886; 1939, c. 272, s. 1.)

§ 106-328. Report on salvage. — When the appraised cattle have been slaughtered and the amount of salvage ascertained, a report, on forms furnished by the State Veterinarian, in triplicate shall be made, signed by the owner and the United States Bureau of Animal Industry or State inspector and the appraisers by which the animals were appraised and destroyed, showing the difference between the appraised value and salvage. Two copies are to be attached to the voucher in which compensation is claimed, and one copy to be furnished by the owner of cattle. (1919, c. 62, s. 6; C. S., s. 4887.)

§ 106-329. Compensation when killing ordered. — Compensation for animals destroyed on account of glanders will only be paid when such destruction is ordered by the State Veterinarian or his authorized representative. When the owner of the animals presents his claim he shall support same with the original report of the appraiser, together with the report of the inspector who destroyed the animal, to the State Veterinarian. (1919, c. 62, s. 7; C. S., s. 4888.)

§ 106-330. Ownership of destroyed animals; outstanding liens. — When animals have been destroyed pursuant to this Article the inspector shall take reasonable precautions to determine, prior to his approval of vouchers in which compensation is claimed, who is the owner of and whether there are any mortgages or other liens outstanding against the animals. If it appears that there are outstanding liens, a full report regarding same shall be made and shall accompany the voucher. Every such report shall include a description of the liens, the name of the person or persons having possession of the documentary evidence, and a statement showing what arrangements, if any, have been made to discharge the liens outstanding against the animals destroyed of which the inspector may have knowledge. (1919, c. 62, s. 8; C. S., s. 4889.)

§ 106-331. State not to pay for feed of animals ordered killed. — Expense for the care and feeding of animals held for slaughter shall not be paid by the State. (1919, c. 62, s. 9; C. S., s. 4890.)

§ 106-332. Disinfection of stockyards by owners. — Stockyards, pens, cars, vessels and other premises and conveyances will be disinfected whenever necessary for the control and eradication of disease by the owners at their expense under the supervision of an inspector of the United States Bureau of Animal Industry or State Veterinarian. (1919, c. 62, s. 10; C. S., s. 4891.)

§ 106-333. Payments made only on certain conditions. — No payments shall be made for any animal slaughtered in the following cases:

(1) If the owner does not disinfect premises, etc., as directed by an inspector of the United States Bureau of Animal Industry or the State Veterinarian.
(2) For any animals destroyed where the owner has not complied with all lawful quarantine regulations.
(3) Animals reacting to a test not approved by the State Veterinarian.
(4) Animals belonging to the United States.
(5) Animals brought into the State in violation of the State laws and regulations.
(6) Animals which the owner or claimant knew to be diseased, or had notice thereof, at the time they came into his possession.
(7) Animals which had the disease for which they were slaughtered or which were destroyed by reason of exposure to the disease, at the time of their arrival in the State.
(8) Animals which have not been within the State of North Carolina for at least 120 days prior to the discovery of the disease.
(9) Where owner does not use reasonable care in protecting animals from disease.
(10) Where owner has failed to submit the necessary reports as required by this Article.
(11) Any unregistered bull. (1919, c. 62, s. 11; C. S., s. 4892; 1939, c. 272, s. 4.)

§ 106-334. Owner's claim for indemnity supported by reports. — The owner must present his claim for indemnity to the State Veterinarian for approval, and the claim shall be supported with the original report of the appraisers, the original report of the sale of the animals in the case of cattle destroyed on account of Bang's disease and tuberculosis, the certificate of the State or United States Bureau of Animal Industry inspector, and a summary of the claim. All of which shall constitute a part of the claim.

The owner must state whether or not the animals are owned entirely by him or advise fully of any partnership, and describe fully any mortgages or other liens against animals. (1919, c. 62, s. 12; C. S., s. 4893; 1939, c. 272, s. 1.)

§ 106-335. State Veterinarian to carry out provisions of Article; how moneys paid out. — The State Veterinarian is authorized, himself or by his representative, to do all things specified in this Article. All moneys authorized to be paid shall be paid from the State treasury on warrants approved by the auditor, and the State Treasurer is hereby authorized to make such payment. (1919, c. 62, s. 13; C. S., s. 4894.)

Part 5. Tuberculosis.

§ 106-336. Animals reacting to tuberculin test. — All animals reacting to a tuberculin test applied by a qualified veterinarian shall be known as reactors and be forever considered as affected with tuberculosis. (1921, c. 177, s. 1; C. S., s. 4895(a).)

§ 106-337. Animals to be branded. — All veterinarians who, either by clinical examination or by tuberculin test, find an animal affected with tuberculosis, shall, unless the animal is immediately slaughtered, properly brand said animal for identification on the left jaw with the letter "T," not less than two inches high, and promptly report the same to the State Veterinarian. (1921, c. 177, s. 2; C. S., s. 4895(b).)

§ 106-338. Quarantine; removal or sale; sale and use of milk. — The owner or owners of an animal affected with tuberculosis shall keep said animal isolated and quarantined in such a manner as to prevent the spread of the disease to the other animals or man. Said animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the State Veterinarian, and then only in accordance with his instructions. The milk from said animals must not be sold, and if used shall be first boiled or properly pasteurized. (1921, c. 177, s. 3; C. S., s. 4895(c).)

§ 106-339. Seller liable in civil action. — Any person or persons who sell or otherwise dispose of to another an animal affected with tuberculosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1921, c. 177, s. 4; C. S., s. 4895(d).)

Cross Reference. — See §§ 106-403, 106-404.

§ 106-340. Responsibility of owner of premises where sale is made. — When cattle are sold or otherwise disposed of in this State by a nonresident of this State, the person or persons on whose premises the cattle are sold or otherwise disposed of with his knowledge and consent shall be equally responsible for violation of this law and the regulations of the Department of Agriculture. (1921, c. 177, s. 5; C. S., s. 4895(e).)

§ 106-341. Sale of tuberculin. — No person, firm, or corporation shall sell or distribute or administer tuberculin, or keep the same on hand for sale, distribution, or administration, except qualified veterinarians, licensed physicians, or licensed druggists, or others lawfully engaged in the sale of biological products. (1921, c. 177, s. 6; C. S., s. 4895(f).)

§ 106-342. Notice to owner of suspected animals; quarantine. — When the State Veterinarian receives information, or has reason to believe, that tuberculosis exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a tuberculin test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the State Veterinarian, or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the State Veterinarian within 10 days after said notice, then the State Veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined and milk or other dairy products from same shall not be sold or otherwise disposed of. Said quarantine shall remain in effect until the said recommendations of the State Veterinarian have been complied with, and the quarantine canceled by the State Veterinarian. (1921, c. 177, s. 7; C. S., s. 4895(g).)

§ 106-343. Appropriations by counties; elections. — The several boards of county commissioners in the State are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the State and federal Departments of Agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in 10 days after said appropriation is voted, one fifth

of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under the rules and regulations provided for holding stock-law elections in G.S. 68-16, 68-20 and 68-21. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and cooperative tuberculosis eradication shall be taken up with the State and federal Departments of Agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation. (1921, c. 177, s. 8; C. S., s. 4895(h).)

Editor's Note. — The references to §§ 68-16, 68-20 and 68-21 in the second sentence are to former sections existing prior to the revision of Article 3 of Chapter 68 by Session Laws 1971, c. 741. Among other things, that act did away with the distinction between "stock-law" and "no-stock-law" territory and eliminated provisions for elections on the question of "stock law" or "no stock law."

§ 106-344. Petition for election if commissioners refuse cooperation; order; effect. — If the board of commissioners of any county should exercise their discretion and refuse to cooperate as set out in G.S. 106-343, then if a petition is presented to said board by one fifth of the qualified voters of the county requesting that an election be held as provided in G.S. 106-343 to determine the question of tuberculosis eradication in the county, the board of commissioners shall order said election to be held in the way provided in G.S. 106-343, and if a majority of the votes cast at such election shall be in favor of tuberculosis eradication, then said board shall cooperate with the State and federal governments as herein provided. (1921, c. 177, s. 9; C. S., s. 4895(i).)

§ 106-345. Importation of cattle. — Whenever a county board shall cooperate with the State and federal governments, whether with or without an election, no cattle except for immediate slaughter shall be brought into the county unless accompanied by a tuberculin test chart and health certificate issued by a qualified veterinarian. (1921, c. 177, s. 10; C. S., s. 4895(j).)

§ 106-346. Amount of appropriation. — When cooperative tuberculosis eradication shall be taken up in any county as provided for in G.S. 106-336 to 106-350, the county commissioners of such counties shall appropriate from the general county fund an amount sufficient to defray one half of the expense of said cooperative tuberculosis eradication. (1921, c. 177, s. 11; C. S., s. 4895(k).)

§ 106-347. Qualified veterinarian. — The words "qualified veterinarian" which appear in G.S. 106-336 to 106-350 shall be construed to mean a veterinarian approved by the State Veterinarian and the chief of the United States Bureau of Animal Industry for the tuberculin testing of cattle intended for interstate shipment. (1921, c. 177, s. 12; C. S., s. 4895(l).)

§ 106-348. Rules and regulations. — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis. (1921, c. 177, s. 13; C. S., s. 4895(m).)

§ 106-349. Violation of law a misdemeanor. — Any person or persons who shall violate any provision set forth in G.S. 106-336 to 106-350, or any rule or regulation duly established by the State Board of Agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a misdemeanor. (1921, c. 177, s. 14; C. S., s. 4895(n).)

§ 106-350. Sale of tubercular animal a felony. — Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with tuberculosis without permission as provided for in G.S. 106-338 shall be guilty of a felony, and punishable by imprisonment of not less than one year or not more than five years in the State prison. (1921, c. 177, s. 15; C. S., s. 4895(o).)

Part 6. Cattle Tick.

§ 106-351. Systematic dipping of cattle or horses. — Systematic dipping of all cattle or horses infested with or exposed to the cattle tick (Margaropus annulatus) shall be taken up in all counties or portions of counties that shall at any time be found partially or completely infested with the cattle tick (Margaropus annulatus) under the direction of the State Veterinarian acting under the authority as hereinafter provided in G.S. 106-351 to 106-363 and as provided in all other laws and parts of laws of North Carolina and the livestock sanitary laws and regulations of the State Board of Agriculture not in conflict with G.S. 106-351 to 106-363. (1923, c. 146, s. 1; C. S., s. 4895(p).)

Editor's Note. — It is said in 1 N.C.L. Rev. 301, that this statute reinforces §§ 106-22 and 106-306.

§ 106-352. Counties not embraced in quarantine zones. — If it shall be determined by the State Veterinarian or an authorized quarantine inspector, that any county or counties shall be partially or completely infested with the cattle tick (Margaropus annulatus), the county commissioners of said counties which are partially or completely infested with the cattle tick (Margaropus annulatus) shall immediately take up the work of systematic tick eradication as hereafter provided and continue same until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the State Veterinarian. (1923, c. 146, s. 3; C. S., s. 4895(r).)

§ 106-353. Dipping vats; counties to provide; cost. — The county commissioners of the aforesaid counties shall provide such numbers of dipping vats as may be fixed by the State Veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, which shall begin on said dates and continue until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the State Veterinarian. The cost of said vats and chemicals, or any other expense incurred in carrying out the provisions of G.S. 106-351 to 106-363, except G.S. 106-354 and 106-358, shall be paid out of the general county fund. (1923, c. 146, s. 4; C. S., s. 4895(s).)

§ 106-354. Local State inspectors; commissioned as quarantine inspectors; salaries, etc. — The State Veterinarian shall appoint the necessary number of local State inspectors to assist in systematic tick eradication, who shall be commissioned by the Commissioner of Agriculture as quarantine inspectors. The salaries of said inspectors shall be sufficient to insure the employment of competent men. If the service of any of said inspectors is not satisfactory to the State Veterinarian, his services shall be immediately discontinued and his commission canceled. (1923, c. 146, s. 5; C. S., s. 4895(t); 1925, c. 275, s. 6.)

§ 106-355. Enforcement of compliance with law. — If the county commissioners shall fail, refuse or neglect to comply with the provisions of G.S. 106-351 to 106-363, the State Veterinarian shall apply to any court of competent

jurisdiction for a writ of mandamus, or shall institute such other proceedings as may be necessary and proper to compel such county commissioners to comply with the provisions of G.S. 106-351 to 106-363. (1923, c. 146, s. 6; C. S., s. 4895(u).)

§ 106-356. Owners of stock to have same dipped; supervision of dipping; dipping period. — Any person or persons, firms or corporations, owning or having in charge any cattle, horses or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any quarantine inspector to do so, have such cattle, horses or mules dipped regularly every 14 days in a vat properly charged with arsenical solution as recommended by the United States Bureau of Animal Industry, under the supervision of said inspector at such time and place and in such manner as may be designated by the quarantine inspector. The dipping period shall be continued as long as may be required by the rules and regulations of the State Board of Agriculture, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (Margaropus annulatus) in such county or counties. (1923, c. 146, s. 7; C. S., s. 4895(v).)

§ 106-357. Service of notice. — Quarantine and dipping notice for cattle, horses and mules, the owner or owners of which cannot be found, shall be served by posting copy of such notice in not less than three public places within the county, one of which shall be placed at the county courthouse. Such posting shall be due and legal notice. (1923, c. 146, s. 8; C. S., s. 4895(w).)

§ 106-358. Cattle placed in quarantine; dipping at expense of owner. — Cattle, horses or mules infested with or exposed to the cattle tick (Margaropus annulatus) the owner or owners of which, after five days' written notice from a quarantine inspector of such animals as is provided for in G.S. 106-357, shall fail or refuse to dip such animals regularly every 14 days in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry, under the supervision of a quarantine inspector, shall be placed in quarantine, dipped and cared for at the expense of the owner or owners, by the quarantine inspector. (1923, c. 146, s. 9; C. S., s. 4895(x).)

§ 106-359. Expense of dipping as lien on animals; enforcement of lien. — Any expense incurred in the enforcement of G.S. 106-358 and the cost of feeding and caring for animals while undergoing the process of tick eradication shall constitute a lien upon any animal, and should the owner or owners fail or refuse to pay said expense, after three days' notice, they shall be sold by the sheriff of the county after 20 days' advertising at the courthouse door and three other public places in the immediate neighborhood of the place at which the animal was taken up for the purpose of tick eradication. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder for cash. Out of the proceeds of the sale the sheriff shall pay the cost of publishing the notices of the tick-eradication process, including dipping, cost of feeding and caring for the animals and cost of the sale, which shall include one dollar and fifty cents ($1.50) in the case of each sale to said sheriff. The surplus, if any, shall be paid to the owner of the animal if he can be ascertained. If he cannot be ascertained within 30 days after such sale, then the sheriff shall pay such surplus to the county treasurer for the benefit of the public school fund of the county: Provided, however, that if the owner of the animal shall, within 12 months after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of county commissioners of the county that he was the owner of such animal, then, upon the order of said board, such surplus shall be refunded to the owner. (1923, c. 146, s. 10; C. S., s. 4895(y).)

§ 106-360. Duty of sheriff. — It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of G.S. 106-351 to 106-363 and the regulations of the North Carolina Department of Agriculture. If the sheriff of any county shall neglect, fail or refuse to render his assistance when so required, he shall be guilty of a misdemeanor and be punishable at the discretion of the court. (1923, c. 146, s. 11; C. S., s. 4895(z).)

§ 106-361. Rules and regulations. — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to complete tick eradication in North Carolina. (1923, c. 146, s. 12; C. S., s. 4895(aa).)

§ 106-362. Penalty for violation. — Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-351 to 106-363 or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provision of G.S. 106-351 to 106-363 shall be guilty of a misdemeanor. (1923, c. 146, s. 13; C. S., s. 4895(bb).)

§ 106-363. Damaging dipping vats a felony. — Any person or persons who shall willfully damage or destroy by any means any vat erected, or in the process of being erected, as provided for tick eradication, shall be guilty of a felony and upon conviction shall be imprisoned not less than two years nor more than 10 years in the State prison. (1923, c. 146, s. 14; C. S., s. 4895(cc).)

Part 7. Rabies.

§ 106-364. Definitions. — The following definitions shall apply to G.S. 106-364 to 106-387:

(1) The term "dog" shall mean a dog of either sex.

(2) The term "local health director" shall be understood to include district health officer, county health officer, city health officer, and city-county health officer, county superintendent of health, or any other administrative head of a local health department.

(3) The term "vaccination" shall be understood to mean the administration of antirabic vaccine approved by the United States Bureau of Animal Industry, the North Carolina State Department of Agriculture, and the North Carolina Commission for Health Services. (1935, c. 122, s. 1; 1949, c. 645, s. 1; 1953, c. 876, s. 1; 1957, c. 1357, s. 3; 1973, c. 476, s. 128.)

Editor's Note. — Session Laws 1953, cc. 120, 252, made all of the provisions of this Part, §§ 106-364 through 106-387, applicable to Person and Union Counties, respectively.

Session Laws 1957, c. 277, made all the provisions of this Part applicable to Edgecombe County.

§ 106-365. Vaccination of all dogs. — In all counties where a campaign of vaccination is being conducted, it shall be the duty of the owner of each and every dog over four months of age to have same vaccinated against rabies annually, or at a time or times determined by the Commission for Health Services, but no more often than once in each calendar year in accordance with the provisions of G.S. 106-364 to 106-387. All antirabic vaccine shall be administered by licensed veterinarians or by properly qualified laymen in accordance with the provisions of G.S. 106-366. (1935, c. 122, s. 2; 1941, c. 259, c. 2; 1953, c. 876, s. 2; 1973, c. 476, s. 128.)

§ 106-366. Appointment and qualifications of rabies inspectors; preference to veterinarians. — It shall be the duty of the local health director with the approval of the board of county commissioners of each county, and in those counties where a local health director is not employed it shall be the duty of the county board of commissioners, to appoint a sufficient number of rabies inspectors to carry out the provisions of G.S. 106-364 to 106-387. In the appointment of rabies inspectors, preference shall be given to licensed veterinarians. No person shall be appointed as a rabies inspector unless such person is of good moral character and by training and experience is qualified in the opinion of the local health director and the board of county commissioners to perform the duties required under G.S. 106-364 to 106-387. (1935, c. 122, s. 3; 1941, c. 259, s. 3; 1953, c. 876, s. 3; 1957, c. 1357, s. 4.)

Local Modification. — Davie: 1937, c. 255.

§ 106-367. Time of vaccination. — The vaccination of all dogs shall begin on February 1 and shall be completed within 90 days of that date. Provided, however, that the local health director, in those counties having a local health director, and the county board of commissioners in those counties which do not have a local health director, may require the vaccination of all dogs within any area of said counties when such vaccination is deemed necessary for the control of rabies. (1935, c. 122, 4; 1949, c. 645, s. 2; 1953, c. 876, s. 4; 1957, c. 1357, s. 5.)

§ 106-368. Publication of notice of date of vaccination; duty of owner. — The rabies inspector shall give due notice through the newspaper of the county and by posting notice at the courthouse and at one or more public places in each township of the county of the date on which the vaccination of all dogs shall be started in a county and it shall be the duty of the owner of every dog in said county to have said dog, or dogs, at either of two or more points in the township for the purpose of having same vaccinated, said points and date to be designated by the rabies inspector. (1935, c. 122, s. 5; 1941, c. 259, s. 4.)

§ 106-369. Vaccine and cost; metal tag to be worn by dog; certificate of vaccination. — The State Department of Agriculture may purchase proper rabies vaccine and a uniform metal tag serially numbered, suitably lettered and showing the year issued, provided for in G.S. 106-364 to 106-387, for resale to the rabies inspectors. The resale price shall include State cost of the vaccine, metal tags, handling and postage. At the time of vaccination the rabies inspector shall give to the owner or person in charge of each dog vaccinated a numbered metal tag together with a certificate. The certificate shall be issued in duplicate, the rabies inspector to retain a copy. The metal tag shall be worn by the dog at all times. (1935, c. 122, s. 6; 1941, c. 259. s. 5; 1959, c. 352.)

Local Modification. — Orange: 1953, c. 367, s. 5.

§ 106-370. Notice to sheriff of each county and his duty to assist. — The rabies inspector shall notify the sheriff of the county of the date when the vaccination of dogs in said county shall begin and it shall be the duty of the sheriff and his deputies to assist the rabies inspector in the enforcement of G.S. 106-364 to 106-387. (1935, c. 122, s. 7; 1941, c. 259, s. 6.)

§ 106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs. — When the rabies inspector has carried out the provisions of G.S. 106-364 to 106-387 as to G.S. 106-368 in all townships of the county, it shall be the duty of the sheriff with the assistance

of the rabies inspector to make a thorough canvass of the county and frequently thereafter to determine if there are any dogs that are not wearing the metal tag provided for in G.S. 106-369. If such dogs are found, the sheriff shall notify the owner to have same vaccinated by a rabies inspector and to produce the certificate provided for in G.S. 106-369, within three days. If the owner shall fail to do this he shall be prosecuted in accordance with the provisions of G.S. 106-364 to 106-387. If the owner of a dog not wearing a tag cannot be found it shall be the duty of said officer to destroy said dog. (1935, c. 122, s. 8.)

Local Modification. — Forsyth: 1949, c. 622, s. 2; Guilford: 1949, c. 462, s. 1; Mecklenburg: 1957, c. 904.

§ 106-372. Fee for vaccination; penalty for late vaccination. — The rabies inspector shall collect from the owner of each dog vaccinated a vaccination fee in an amount if any to be fixed by the county board of commissioners. Any owner who fails to have his dog vaccinated at the time provided in G.S. 106-368 shall have said dog vaccinated in accordance with G.S. 106-371 and shall pay the rabies inspector an additional sum of one dollar ($1.00) to be retained by him for each dog treated. (1935, c. 122, s. 9; 1941, c. 259, s. 7; 1949, c. 645, s. 5; 1953, c. 876, s. 5; 1959, c. 139.)

Local Modification. — Guilford: 1949, c. 462, s. 2; Washington: 1955, c. 353; Wilson: 1941, c. 259, s. 7.

§ 106-372.1: Repealed by Session Laws 1953, c. 876, s. 6.

§ 106-373. Vaccination of dogs after vaccination period. — It shall be the duty of the owner of any dog born after February 1 in any year or any dog which shall not be four months old on February 1 in any year to take the dog, when four months of age or within 30 days thereafter, to a licensed veterinarian or to a rabies inspector and have it vaccinated against rabies. (1935, c. 122, s. 10; c. 334; 1941, c. 259, s. 8; 1949, c. 645, s. 6; 1953, c. 876, s. 7.)

Local Modification. — Wilson: 1941, c. 259, s. 8.

§ 106-374. Vaccination and confinement of dogs brought into State. — All dogs shipped or otherwise brought into this State, except for exhibition purposes where the dogs are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination unless accompained by a certificate issued by a qualified veterinarian showing that said dog is apparently free from rabies and has not been exposed to same and that said dog has received a proper dose of rabies vaccine not more than six months prior to the date of issuing the certificate. (1935, c. 122, s. 11.)

§ 106-375. Quarantine of districts infected with rabies. — The local health director and, in those counties where local health directors are not employed, the county board of commissioners may declare quarantine against rabies in any district when in his or its judgment this disease exists to the extent that the lives of persons are endangered, and in that event each and every dog in such district shall be confined on the premises of the owner or in a veterinary hospital; provided, that a dog may be permitted to leave the premises of the owner if on leash or under the control and in the sight of its owner or other responsible

person at all times. (1935, c. 122, s. 12; 1941, c. 259, s. 9; 1949, c. 645, s. 3; 1953, c. 876, s. 8; 1957, c. 1357, s. 8.)

Local Modification. — Cleveland: 1955, c. 306.

§ 106-376. Killing stray dogs in quarantine districts. — When quarantine has been established, and dogs continue to run at large, uncontrolled by owners or persons responsbile for their control, any peace officer shall have the right after reasonable effort has been made on the part of the officers to apprehend the dogs running at large to kill said dogs and properly dispose of their bodies. (1935, c. 122, s. 13; 1953, c. 876, s. 9.)

§ 106-377. Infected dogs to be killed; protection of dogs vaccinated. — Every dog known to have been bitten by another animal which is known or proved to be rabid shall be killed immediately by its owner or by a peace officer; provided, that any dog which has been vaccinated in accordance with G.S. 106-364 to 106-387 at least three weeks before being bitten but not more than one year before, shall be closely confined for 90 days. At the end of the period of confinement, such dog shall be released if declared free of rabies by a rabies inspector or a licensed graduate veterinarian. If during the period of confinement such dog develops rabies, as determined by a licensed graduate veterinarian, it shall be the duty of the owner to have such animal killed, and properly disposed of, subject to the provisions of G.S. 106-379. (1935, c. 122, s. 14; 1953, c. 876, s. 10.)

§ 106-378. Confinement of suspected animals. — Every person who owns or has possession of an animal which is suspected of having rabies shall confine such animal at once in some secure place for at least 10 days before such animal shall be released. (1935, c. 122, s. 15; c. 344; 1941, c. 259, s. 10; 1953, c. 876, s. 11.)

§ 106-379. Animals having rabies to be killed; heads ordered to a laboratory. — Every rabid animal, after rabies has been diagnosed by a licensed graduate veterinarian, shall be killed at once by its owner or by a peace officer; except that if the animal has bitten a human being, such animal shall be confined under the supervision of a licensed graduate veterinarian until the death of the animal. All heads of animals suspected of dying of rabies shall be sent immediately to a laboratory approved by the Department of Human Resources. Care shall be taken not to damage the brain and to submit such specimens in a manner approved by the State Laboratory of Hygiene. (1935, c. 122, s. 16; 1953, c. 876, s. 12; 1973, c. 476, s. 128.)

§ 106-380. Notice to local health director when person bitten; confinement of dog; reports by physicians. — When a person has been bitten by an animal having rabies or suspected of having rabies, it shall be the duty of such person, or his parent or guardian if such person is a minor, and the person owning such animal or having the same in his possession or under his control, to notify the local health director immediately and give their names and addresses; and the owner or person having such animal in his possession or under his control shall immediately securely confine it for 10 days at the expense of the owner in such place as may be designated by the local health director. It shall be the duty of every physician, after his first professional attendance upon a person bitten by any animal having rabies or suspected of having rabies, to report to the local health director the name, age and sex of the person so bitten, and precise location of the bite wound, within 24 hours after first having knowledge that the person was bitten. If the owner of or a person who has in his possession or under his control an animal having rabies or suspected of having rabies refuses to confine

the animal as required by this section or by G.S. 106-378, the local health director may order seizure of the animal and its confinement for 10 days in such place as the director designates, the expense to be paid by the owner. (1935, c. 122, s. 17; 1941, c. 259, s. 11; 1953, c. 876, s. 13; 1957, c. 1357, s. 9; 1977, c. 628.)

Editor's Note. — The 1977 amendment added the third sentence.

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

§ 106-381. Confinement or leashing of vicious animals. — When an animal becomes vicious or a menace to the public health, the owner of such animal or person harboring such animal shall not permit such animal to leave the premises on which kept unless on leash in the care of a responsible person. (1935, c. 122, s. 18; 1953, c. 876, s. 14.)

Purpose. — This section was enacted for the specific purpose of protecting the public from dogs which have become vicious or a menace to public health. Swaney v. Shaw, 27 N.C. App. 631, 219 S.E.2d 803 (1975).

Ordinance Valid. — An ordinance of a city making it unlawful to keep a dog which habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, bicycles or vehicles is a valid exercise of the city's police power. Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

To safeguard and promote the public health, safety and convenience, municipal power to regulate the keeping and licensing of dogs within the corporate area is generally recognized, and ordinances regulating and requiring them to be registered, licensed, and at times muzzled and prevented from going at large, are within the police powers usually conferred upon the local corporation. Such ordinances are authorized by virtue of general powers and the usual general welfare clause. Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

A town ordinance dealing with dogs running at large was not inconsistent with this section. The statute is designed to provide minimum protection against vicious dogs in all parts of the State — rural, urban, small villages and large cities. It stands to reason that with more concentrated population, cities are justified in adopting stricter regulations for dogs, and a city is authorized to require "a higher standard of conduct or condition" with respect to the keeping of dogs within its corporate limits than is required by this section for the State generally. Pharo v. Pearson, 28 N.C. App. 171, 220 S.E.2d 359 (1975).

Violation Negligence Per Se. — The violation of a statute which imposes a duty upon the defendant in order to promote the safety of others, including the plaintiff, is negligence per se, unless the statute, itself, otherwise provides. Swaney v. Shaw, 27 N.C. App. 631, 219 S.E.2d 803 (1975).

Evidence Insufficient to Show Dog "Vicious". — Evidence that a small dog frequently dashed into the street to bark at and pursue motorcycles, automobiles, and other noisy vehicles is not sufficient to justify classifying him as a "vicious" animal and does not make him "a menace to the public health." Sink v. Moore, 267 N.C. 344, 148 S.E.2d 265 (1966); Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

Canine courage in a contest for the championship of the neighborhood, together with determination to remain in possession of the field of battle "whence all but him had fled," is not evidence of a vicious character within the meaning of this section. Sink v. Moore, 267 N.C. 344, 148 S.E.2d 265 (1966).

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

§ 106-382. Administration of law in cities and larger towns; cooperation with sheriffs. — In towns or cities with a population of 5,000, or more, the responsibility for assistance in the enforcement of G.S. 106-364 to 106-387 shall be with the public safety or police department of said town or city, and this department shall be subject to the same rules, regulations and penalties as the sheriffs of the several counties; and it shall further be the duty of the public safety or police department in towns or cities assisting in the enforcement of

G.S. 106-364 to 106-387 to cooperate with the sheriff of any county in the carrying out of the provisions of G.S. 106-364 to 106-387 for a distance of one mile beyond the city limits. (1935, c. 122, s. 19.)

§ 106-383. Regulation of content of vaccine; doses. — Rabies vaccine intended for use on dogs and other animals shall not be shipped or otherwise brought into North Carolina, used, sold, or offered for sale unless said rabies vaccine shall be approved by the U.S. Bureau of Animal Industry, North Carolina State Department of Agriculture and North Carolina Commission for Health Services. Rabies vaccine shall be given in doses recommended by the manufacturer of the vaccine. (1935, c. 122, s. 20; 1953, c. 876, s. 15; 1973, c. 476, s. 128.)

§ 106-384. Law declared additional to other laws on subject. — The provisions of G.S. 106-364 to 106-387 shall not be construed to repeal or change any laws heretofore enacted but shall be in addition thereto except insofar as said laws heretofore enacted and enforced shall actually conflict with the provisions of G.S. 106-364 to 106-387 and prevent the proper enforcement of said provisions. And the said laws enacted and now in force shall remain in full force and effect except as they do actually conflict with the enforcement of the provisions of G.S. 106-364 to 106-387 in which G.S. 106-364 to 106-387 and the provisions thereof shall prevail. (1935, c. 122, s. 21.)

§ 106-385. Violation made misdemeanor. — Any person who shall violate any of the provisions of G.S. 106-364 to 106-387 or any provision of any regulation of quarantine established thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten dollars ($10.00) or more than fifty dollars ($50.00), or to imprisonment of not less than 10 days or more than 30 days in the discretion of the court. (1935, c. 122, s. 23.)

Local Modification. — Orange: 1953, c. 367, s. 5.

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

§ 106-387. Disposition of funds. — Any money collected under the provisions of G.S. 106-364 to 106-387 in excess of the cost of operations and enforcement shall become a part of the agricultural fund of the State of North Carolina. (1935, c. 190.)

Part 8. Brucellosis (Bang's Disease).

§ 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc. — It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture. (1937, c. 175, s. 1; 1967, c. 511.)

§ 106-389. Brucellosis defined; program for vaccination; sale, etc., of vaccine; cooperation with the United States Department of Agriculture. — "Brucellosis" shall mean the disease wherein an animal is infected with Brucella organisms (including Brucella Abortus, B. Melitensis and B. Suis), irrespective of the occurrence or absence of abortion or other symptoms. An animal shall be declared affected with brucellosis if it is classified as a reactor to a serological test for the disease, or if the Brucella organism has been found in the body, its

secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves in accordance with the recommendations of the Brucellosis Committee of the United States Livestock Sanitary Association, and approved by the United States Department of Agriculture, when in his opinion vaccination is necessary for the control and eradication of brucellosis. Vaccinated animals shall be permanently identified by tattooing or other methods approved by the Commissioner of Agriculture. Above the ages designated by regulation of the Board of Agriculture, all such vaccinates classified as reactors on an official test for brucellosis, shall be considered as affected with brucellosis and shall be branded with the letter "B" in accordance with G.S. 106-390. It shall be unlawful to sell, offer for sale, distribute, or use brucellosis vaccine or any product containing live Brucella organisms, except as provided for in regulations adopted by the Board of Agriculture.

The control and eradication of brucellosis in the herds of North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the control and eradication of brucellosis. (1937, c. 175, s. 2; 1945, c. 462, s. 1; 1953, c. 1119; 1967, c. 511.)

§ 106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc. — All blood samples for the brucellosis test shall be drawn by persons whose qualifications are set by regulation of the Board of Agriculture. Animals from which blood is collected for a brucellosis test shall be identified by numbered ear tag, tattoo, or in some other manner approved by the Commissioner of Agriculture. It shall be the duty of the person who collects the blood sample, or other designated authorized person, to brand all cattle affected with brucellosis with the letter "B" on the left hip or jaw, not less than three or more than four inches high, tag such animals with an approved brucellosis reactor ear tag, and report the same to the State Veterinarian. It shall be the duty of the person owning said cattle at the time of said testing to assist with and cooperate with the person testing said cattle. Cattle affected with brucellosis shall be quarantined and slaughtered at a State or federally inspected slaughter plant within 10 days after branding and tagging; provided the State Veterinarian, in his discretion, may grant an extension of time for said slaughter not to exceed 30 days; and provided further that the Commissioner of Agriculture may allow a branded and tagged animal having unusual breeding value to be held for a period of time determined by him under conditions of isolation and quarantine prescribed by the State Veterinarian. Animals believed by the State Veterinarian or his authorized representative to have been exposed to brucellosis, or animals classified as suspects, shall be quarantined on the owner's premises or at such other place as is mutually agreeable to the owner and the State Veterinarian until the quarantine is removed in accordance with law or until the animal is disposed of in accordance with law. No animal affected with, or exposed to, brucellosis shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same made to the State Veterinarian.

All cattle, swine, sheep, goats or other animals subject to infection by Brucella organisms, sold, or offered at public sale, except for immediate slaughter, shall be subject to test requirements established by the Board of Agriculture.

No ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for the purpose of brucellosis testing, including testing at slaughter plants, shall be removed from the animal without authorization from the State Veterinarian or his authorized

representative. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1171; 1963, c. 489; 1967, c. 511; 1969, c. 465.)

§ 106-391. Civil liability of vendors. — Any person or persons who knowingly sells, or otherwise disposes of, to another, an animal affected with brucellosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4; 1967, c. 511.)

Cross Reference. — For similar section, see § 106-339.

§ 106-392. Sales by nonresidents. — When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of G.S. 106-388 to 106-398 and the regulations of the Department of Agriculture. (1937, c. 175, s. 5; 1967, c. 511.)

§ 106-393. Duties of State Veterinarian; quarantine of animals; required testing. — When the State Veterinarian receives information, or has reasonable grounds to believe, that brucellosis exists in any animal, or animals, or that it has been exposed to the disease, he shall promptly cause said animal, or animals, to be quarantined on the premises of owner or such other place as is mutually agreeable to the owner and the State Veterinarian or his authorized representative. Said animals shall not be removed from premises where quarantined until quarantine has been released by State Veterinarian or his authorized representative. A permit to move such infected or exposed animals to immediate slaughter may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make regulations to provide for compulsory testing of animals for brucellosis. (1937, c. 175, s. 6; 1967, c. 511.)

§ 106-394. Cooperation of county boards of commissioners. — The several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the State and United States Departments of Agriculture in the eradication of brucellosis in their respective counties. (1937, c. 175, s. 7; 1967, c. 511.)

§ 106-395. Compulsory testing. — Whenever a county board of commissioners shall cooperate with the State and the United States governments, as provided for in G.S. 106-388 to 106-398, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle. (1937, c. 175, s. 8; 1967, c. 511.)

§ 106-396. Authority to promulgate and enforce rules and regulations. — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of G.S. 106-388 to 106-398, and for the effective control and eradication of brucellosis. (1937, c. 175, s. 10; 1967, c. 511.)

§ 106-397. Violation made misdemeanor. — Any person or persons who shall violate any provision set forth in G.S. 106-388 to 106-398, or any rule or regulation duly established pursuant to this Article by the State Board of Agriculture or any inspector who shall willfully fail to comply with any

provisions of G.S. 106-388 to 106-398, shall be guilty of a misdemeanor. (1937, c. 175, s. 11; 1967, c. 511.)

§ 106-398. Punishment for sale of animals known to be infected, or under quarantine. — Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with brucellosis, or under quarantine because of suspected exposure to brucellosis, except as provided for in G.S. 106-388 to 106-398, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars ($50.00) and not more than two hundred dollars ($200.00), or imprisoned for a term of not less than 30 days or more than two years. (1937, c. 175, s. 12; 1967, c. 511.)

§ 106-399: Repealed by Session Laws 1967, c. 511.

Part 9. Control of Livestock Diseases.

§ 106-400. Permit from State Veterinarian for sale, transportation, etc., of animals affected with disease. — No person or persons shall sell, trade, offer for sale or trade, or transport by truck or other conveyance on any public road or other public place within the State any animal or animals affected with a contagious or infectious disease, except upon a written permit of the State Veterinarian and in accordance with the provisions of said permit. The State Veterinarian, or his authorized representative, is hereby empowered to examine any livestock that are being transported or moved, sold, traded, offered for sale or trade on any highway or other public place within the State for the purpose of determining if said animals are affected with a contagious or infectious disease, or are being transported or offered for sale or trade in violation of G.S. 106-400 to 106-405. If the animals are found to be diseased or are being moved, sold, offered for sale or trade in violation of G.S. 106-400 to 106-405, they shall be placed under quarantine in accordance with the provisions of G.S. 106-400 to 106-405 in a place to be determined by the State Veterinarian or his authorized representative. Any animal or animals shipped or otherwise moved into this State in violation of federal laws or regulations shall be handled in accordance with the provisions of G.S. 106-400 to 106-405. (1939, c. 360, s. 1.)

Cross Reference. — See § 106-307.4.

§ 106-401. State Veterinarian authorized to quarantine. — The State Veterinarian or his authorized representative is authorized to go upon or enter any property in the State, or to stop any motor vehicle on a public or private road to examine any animal which he has reasonable grounds to believe is affected with or exposed to a contagious disease. If such person refuses to consent to such entry and examination after the State Veterinarian or his authorized representative shall have notified, in writing, the owner or person in whose custody such animal or animals are found, of his intention to enter such property and conduct such examination, the State Veterinarian or his authorized representative may petition the district court in the county where such animal or animals are found for an order authorizing such entry and examination. The State Veterinarian or his authorized representative may quarantine any animal affected with or exposed to a contagious disease, or injected with or otherwise exposed to any material capable of producing a contagious disease and shall give public notice of such quarantine by posting or placarding with a suitable quarantine sign the entrance to any part of the premises on which such animal is held. Such animal is to be maintained by the owner or person in charge as provided in G.S. 106-400 through 106-405 at the owner's or person's in charge expense. No animal under quarantine shall be removed from the place of

quarantine except upon a written permit from the State Veterinarian or his authorized representative. Such quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or his authorized representative and such quarantine shall not be cancelled until any sick or diseased animal has been properly disposed of and the premises have been properly cleaned and disinfected. (1939, c. 360, s. 2; 1971, c. 724.)

Cross Reference. — See § 106-307.3.

§ 106-401.1. Inspection and quarantine of poultry. — The State Veterinarian, or his authorized representative, is hereby authorized to go upon or enter any property in the State, or to stop any motor vehicle, to examine any poultry which he has reason to believe are affected with or exposed to a contagious disease. He or his authorized representative is authorized to quarantine any poultry affected with or exposed to a contagious disease, or injected with or otherwise exposed to any material capable of producing a contagious disease and to give public notice of such quarantine by posting or placarding with a suitable quarantine sign the entrance to or any part of the premises on which such poultry are held. Said poultry are to be maintained by the owner or person in charge as provided for in G.S. 106-400 to 106-405 at the owner's expense. The quarantine provision hereof shall not apply to those diseases which are endemic in the State and for which adequate preventive and control measures are not available. No poultry under quarantine shall be moved from the place of quarantine except upon a written permit from the State Veterinarian or his authorized representative. Said quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or his authorized representative and shall not be released or cancelled until the sick or dead poultry have been properly disposed of and the premises have been properly cleaned and disinfected. (1969, c. 693, s. 1.)

§ 106-402. Confinement and isolation of diseased animals required. — Any animal, animals or poultry affected with or exposed to a contagious or infectious disease shall be confined by the owner or person in charge of said animal, animals or poultry in such a manner, by penning or otherwise securing and actually isolating same from the approach or contact with other animals or poultry not so affected; they shall not have access to any ditch, canal, branch, creek, river, or other watercourse which passes beyond the premises of the owner or person in charge of said animals or poultry, or to any public road, or to the premises of any other person. (1939, c. 360, s. 3; 1969, c. 693, s. 2.)

Cross Reference. — See § 106-311.

§ 106-403. Disposition of dead domesticated animals. — It shall be the duty of the owner or person in charge of any of his domesticated animals that die from any cause and the owner, lessee, or person in charge of any land upon which any domesticated animals die, to bury the same to a depth of at least three feet beneath the surface of the ground within 24 hours after knowledge of the death of said domesticated animals, or to otherwise dispose of the same in a manner approved by the State Veterinarian. It shall be a violation of this statute to bury any dead domesticated animal closer than 300 feet to any flowing stream or public body of water. It shall be unlawful for any person to remove the carcasses of dead domesticated animals from his premises to the premises of any other person without the written permission of the person having charge of such premises and without burying said carcasses as above provided. The governing body of each municipality shall designate some appropriate person whose duty it shall be to provide for the removal and disposal, according to the

provisions of this section, of any dead domesticated animals located within the limits of the municipality when the owner or owners of said animals cannot be determined. The board of commissioners of each county shall designate some appropriate person whose duty it shall be to provide for the removal and disposal, according to the provisions of this section, of any dead domesticated animals located within the limits of the county, but without the limits of any municipality, when the owner or owners of said animals cannot be determined. All costs incurred by a municipality or county in the removal of a dead domesticated animal shall be recoverable from the owner of such animal upon admission of ownership or conviction. "Domesticated animal" as used herein shall include poultry. (1919, c. 36; C. S., s. 4488; 1927, c. 2; 1939, c. 360, s. 4; 1971, c. 567, ss. 1, 2.)

§ 106-404. Animals affected with glanders to be killed. — If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1881, c. 368, s. 8; Code, s. 2489; 1891, c. 65; Rev., s. 3296; C. S., s. 4489.)

Cross Reference. — As to compensation for killing diseased animals, see § 106-323 et seq.

§ 106-405. Violation made misdemeanor. — Any person or persons who shall knowingly and willfully violate any provision of G.S. 106-400 to 106-403 shall be guilty of a misdemeanor and punishable by a fine not in excess of five hundred dollars ($500.00) or imprisonment not in excess of six months, or both fine and imprisonment. (1939, c. 360, s. 6; 1969, c. 693, s. 3.)

Local Modification. — Macon: 1939, c. 360, s. 7.

Part 10. Feeding Garbage to Swine.

Repeal of Part. — This Part is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-405.1. Definitions. — For the purpose of this Part, the following words shall have the meanings ascribed to them in this section:

(1) "Garbage" means consisting in whole or in part of animal waste resulting from handling, preparing, cooking and consuming food, including the offal from or parts thereof; provided that the Commissioner of Agriculture or his authorized representative is empowered to exempt from this definition the waste resulting from the processing of seafood.

(2) "Person" means the State, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or any other entity. (1953, c. 720, s. 1; 1967, c. 872, s. 1.)

§ 106-405.2. Permit for feeding garbage to swine. — (a) No person shall feed garbage to swine without first securing a permit therefor from the North Carolina Commissioner of Agriculture or his authorized agent. Such permits shall be issued for a period of one year and shall be renewable on the date of expiration.

(b) No permit shall be issued or renewed for garbage feeding under this Part in any county or other subdivision in which local regulations to prohibit garbage feeding are in effect.

(c) This Part shall not apply to any individual who feeds only his own household garbage to swine: Provided, that any such swine sold or disposed of shall be sold or disposed of in accordance with rules and regulations promulgated by the State Board of Agriculture. (1953, c. 720, s. 2; 1971, c. 566, s. 1.)

§ 106-405.3. Application for permit. — (a) Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the North Carolina Commissioner of Agriculture in accordance with requirements of this Part.

(b) The Commissioner of Agriculture is hereby authorized to collect a fee of twenty-five dollars ($25.00) for each permit issued to a garbage feeder under the provisions of this Part. The fees provided for in this Part shall be used exclusively for the enforcement of this Part.

(c) No permit fee shall be collected from any federal, State, county, or municipal institution. (1953, c. 720, s. 3; 1967, c. 872, s. 2.)

§ 106-405.4. Revocation of permits. — Upon determination that any person, having a permit issued under this Part or one who has applied for a permit hereunder, has violated or failed to comply with any provisions of this Part, the North Carolina Commissioner of Agriculture may revoke such permit or refuse to issue a permit to an applicant therefor. (1953, c. 720, s. 4.)

§ 106-405.5. Sanitation. — Premises on which garbage feeding is permitted under this Part must be equipped with feeding platforms constructed of concrete, wood or other impervious material, or troughs of such material of sufficient size to accommodate the swine herd. Premises must be kept free of collections of unused garbage and waste materials. Sanitation, rat and fly control measures must be practiced as a further means of the prevention of the spread of diseases. (1953, c. 720, s. 5.)

§ 106-405.6. Cooking or other treatment. — All garbage, regardless of previous processing, shall, before being fed to swine, be thoroughly heated to at least 212 degrees F. for at least 30 minutes unless treated in some other manner which shall be approved in writing by the North Carolina Commissioner of Agriculture as being equally effective for the protection of animal and human health. (1953, c. 720, s. 6.)

§ 106-405.7. Inspection and investigation; maintenance of records. — (a) Any authorized representative of the North Carolina Commissioner of Agriculture shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the proper treatment of garbage to be fed to swine, sanitation of the premises and health of the animals.

(b) Garbage feeders shall keep a complete permanent record relating to the operation of equipment and their procedure of treating garbage, and also from whom all swine are received and to whom sold for immediate slaughter. Such record is to be available to the Commissioner of Agriculture or his authorized representative.

(c) Any operator, manager or person in charge of a restaurant, cafe, boardinghouse, school, hospital, or other public or private place where food is served to persons other than members of the immediate family or nonpaying guests of such operator, manager, or person in charge, shall not allow or permit garbage to be removed from the premises thereof unless the person removing said garbage is in possession of a valid garbage-feeding permit issued by the North Carolina Department of Agriculture, or unless such person removing said garbage is in possession of a document from the county department of health wherein such garbage is located stating that the person removing said garbage is authorized to dispose of such garbage in a legal manner or unless such person removing said garbage is an employee of a municipality engaged in the regular collection of garbage for said municipality. The name and address or license number of any motor vehicle of any person removing garbage other than under authorization from the county department of health, the North Carolina Department of Agriculture or a municipality, shall be reported by such operator, manager or person in charge, to the State Veterinarian within five days after the first removal of such garbage is made. (1953, c. 720, s. 7; 1971, c. 566, s. 2.)

§ 106-405.8. Enforcement of Part; rules and regulations. — The North Carolina Commissioner of Agriculture is hereby charged with the administration and enforcement of the provisions of this Part. The North Carolina Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to cooperate with the United States Bureau of Animal Industry in the control and eradication of vesicular exanthema.

The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to carry out the provisions of this Part. (1953, c. 720, s. 8.)

§ 106-405.9. Penalties. — Any person, firm or corporation who shall knowingly violate any provisions set forth in this Part or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this Part shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. Such person, firm, or corporation may be enjoined from continuing such violation. (1953, c. 720, s. 9.)

§§ 106-405.10 to 106-405.14: Reserved for future codification purposes.

Part 11. Equine Infectious Anemia.

§ 106-405.15. "Equine infectious anemia" defined. — Equine infectious anemia shall mean the disease wherein an animal is infected with the virus of equine infectious anemia, irrespective of the occurrence or absence of clinical signs of the disease. An animal shall be declared infected with equine infectious anemia if it is classified as a reactor to a serological test or other test approved by the State Veterinarian. (1973, c. 1198, s. 1.)

§ 106-405.16. Animals infected with or exposed to equine infectious anemia declared subject to quarantine. — It is hereby declared that the disease of horses, ponies, mules and asses (and other equine animals) known as equine infectious anemia is of an infectious and contagious nature and that animals infected with, exposed to, or suspected of being carriers of the disease shall be subject to quarantine and identification as required by the rules and regulations of the North Carolina Department of Agriculture. (1973, c. 1198, s. 2.)

§ 106-405.17. Authority to promulgate and enforce rules and regulations. — The State Board of Agriculture shall have full power to promulgate and

enforce such rules and regulations as it deems necessary for the control and eradication of equine infectious anemia. This authority shall include, but not be limited to, the power to make regulations requiring the testing of horses, ponies, mules and asses for equine infectious anemia prior to sale, exhibition or assembly at public stables or other public places, and authority to require the owner, operator or person in charge of shows, sales, public stables and other public places to require proof of freedom from equine infectious anemia before any animal is permitted to remain on the premises. (1973, c. 1198, s. 3.)

§ 106-405.18. Implementation of control and eradication program. — The control and eradication of equine infectious anemia in North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the U.S. Department of Agriculture in the control and eradication of equine infectious anemia. (1973, c. 1198, s. 4.)

§ 106-405.19. Violation made misdemeanor. — Any person who shall willfully move, direct the movement, or allow to be moved, from the premises where quartered any animal or animals known to be infected with equine infectious anemia, or under quarantine because of suspected exposure to equine infectious anemia, or who shall violate any provision of this Part or any rule or regulation promulgated by the Board of Agriculture under this Part shall be guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or imprisoned, or both, in the discretion of the court. (1973, c. 1198, s. 5.)

ARTICLE 35.

Public Livestock Markets.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application. — Any person, firm or corporation desiring to operate a public livestock market within the State of North Carolina shall be required to file an application with the Commissioner of Agriculture for a permit authorizing the operation of such market; provided that, those markets operating under a valid permit and in accordance with G.S. 106-406 through 106-418 at the time this Article becomes effective shall be issued a license upon payment of the annual license fee and upon satisfying the requirement for bonding as specified in G.S. 106-407. An application for a permit shall include the following information:

(1) The name and address of the applicant, name of market and a listing of the names and addresses of all persons having any financial interest in the proposed livestock market and the amount and nature of such interest, and such other information as is required to complete an application form supplied by the Commissioner; and

(2) The plans and specifications for the facilities proposed to be built, or for existing structures.

The application for a permit shall be accompanied by a permit fee of two hundred fifty dollars ($250.00), two hundred dollars ($200.00) of which shall be returned to the applicant if the application is denied, plus one hundred dollars ($100.00) annual permit fee for the first year of operation of the market, all of which shall be returned to the applicant if the application is denied. There shall be an annual renewal fee of one hundred dollars ($100.00) for each year of operation thereafter.

Upon the filing of said application, the Commissioner shall determine whether all necessary information has been furnished. If all information required has not been furnished, the Commissioner shall notify the applicant by mail of the additional information needed; it shall be furnished the Commissioner by the applicant within 10 days of such notification. Upon receipt of all required information, the Commissioner shall issue a license or fix the date of a hearing on said application, to be held in Raleigh. Notice of the time and date of the hearing shall be published in a newspaper having general circulation in the county in which the livestock market is proposed to be located; said notice shall appear at least 10 days prior to such hearing. The applicant shall be notified by mail by the Commissioner at least 20 days prior to the hearing of the time and place of said hearing. The Commissioner shall also notify by mail the members of the Public Livestock Market Advisory Board of the time and place of said hearing, at least 10 days before the date [on] which the hearing will be held.

A public hearing shall be conducted by the Commissioner on said application. If, after the hearing, at which any person may appear in support or opposition thereto, the North Carolina Public Livestock Market Advisory Board finds that the public livestock market for which a permit or license is sought fulfills the requirements of all applicable laws, it shall recommend to the Commissioner that a permit be issued to the applicant. If the Commissioner denies the application, the applicant may appeal within 10 days of notice of said denial to the Board of Agriculture which can uphold or reverse the Commissioner. If the Board of Agriculture upholds the Commissioner, the applicant may appeal to the Superior Court of Wake County under the procedures of Chapter 150A of the General Statutes. Unless revoked by the Board of Agriculture pursuant to any applicable law or regulation, permits will be renewed each July 1 on payment of the annual renewal fee. (1941, c. 263, s. 1; 1943, c. 724, s. 1; 1967, c. 894, s. 1; 1971, c. 739, s. 1; 1973, c. 1331, s. 3; 1975, c. 69, s. 4; 1977, c. 132, ss. 1-3.)

Editor's Note. — The 1977 amendment added the second sentence to the second paragraph, inserted "issue a license or" in the third sentence of the third paragraph, and substituted "recommend to the Commissioner that a permit be issued" for "issue a nontransferable permit" in the second sentence of the last paragraph.

§ 106-407. Bonds required of operators; exemption of certain market operations. — The Commissioner of Agriculture shall require the owner of each public livestock market issued a permit under the provisions of G.S. 106-406 to furnish a bond acceptable to the Commissioner of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000), in the discretion of the Commissioner, to secure the performance of all obligations incident to the operation of the public livestock market operation including prompt payment to the vendors of all livestock sold at said market; provided, that, at the discretion of the Commissioner of Agriculture, a bond shall not be required of a livestock market bonded under the Federal Packers and Stockyards Act.

The term "public livestock market" as used in this Article shall not be interpreted to mean any of the following:

(1) A market where horses and mules exclusively are sold;

(2) A market that sells only finished livestock to be used for immediate slaughter;

(3) A dispersal sale of livestock by a farmer, dairyman, livestock breeder, or feeder when all animals offered for sale have been owned by him at least 30 days; provided that, no more than one dispersal sale shall be held by any person, firm or corporation within any period of six months.

(4) Purebred livestock association sales and those sales where Future Farmers of America, 4-H Clubs and similar groups, State institutions, or private fairs conduct sales of livestock. (1941, c. 263, s. 2; 1967, c. 894, s. 2.)

§ 106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties. — There is hereby created the North Carolina Public Livestock Market Advisory Board composed of eight persons, all of whom shall be residents of North Carolina, who shall be appointed and the chairman designated by the Commissioner of Agriculture on or before August 1, 1967. Two members of said Board shall be livestock producers, two shall be licensed livestock market operators, one shall be a meat packer, one shall be the State Veterinarian, one shall be a duly licensed and practicing veterinarian and one shall be an employee of the markets division of the North Carolina Department of Agriculture. On the initial Board, two members shall be appointed for terms of one year, two members for terms of two years, two members for terms of three years, and two members for terms of four years. Thereafter, all members shall serve four-year terms. Any vacancy on the Board caused by death, resignation, or otherwise, shall be filled by the Commissioner of Agriculture for the expiration of the term. The terms of all members of the initial and subsequent boards shall expire on June 30 of the year in which their terms expire.

It shall be the duty of the members of the Board to attend all hearings on applications for licenses to operate public livestock markets. It shall also be the duty of the members of the Board to meet at least once each year, or more often if directed by the Commissioner, in Raleigh or such other place in North Carolina as directed by the Commissioner for the purpose of (i) discussing problems of the livestock market industry, (ii) proposing changes in the rules and regulations of the Department of Agriculture relative to public livestock markets, and (iii) making such other recommendations to the Commissioner and the Board of Agriculture as it deems in the best interest of the livestock industry of North Carolina.

Members of the Board, except members who are employees of the State, shall receive as compensation, subsistence and travel allowances, such sums as by law are provided for other commissions and boards. Compensation, subsistence and travel allowances authorized for the Board members shall be paid from fees collected pursuant to this Article. (1967, c. 894, s. 3; 1977, c. 132, s. 4.)

Editor's Note. — The 1977 amendment added the second sentence to the third paragraph and deleted the former fourth paragraph, relating to the payment and disbursement of permit fees and annual renewal fees.

State Government Reorganization. — The Public Livestock Market Advisory Board was transferred to the Department of Agriculture by § 143A-65, enacted by Session Laws 1971, c. 864.

§ 106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations. — The permit authorizing the operation of a public livestock market may be revoked by the North Carolina Board of Agriculture for violation of the provisions of this Article, or the rules and regulations promulgated thereunder, after the owner or operator of the public livestock market shall have been given 10 days' written notice of the alleged violation and opportunity to be heard relative thereto by the North Carolina Board of

Agriculture. Such revocation may be appealed to the superior court under the provisions of Chapter 150A of the General Statutes.

If any person, firm or corporation shall operate a public livestock market in violation of the provisions of this Article, or the rules and regulations promulgated by the North Carolina Board of Agriculture, or shall fail to comply with the provisions of this Article, or rules and regulations promulgated thereunder, a temporary or permanent restraining order may be issued by a judge of the superior court upon application by the Commissioner of Agriculture, or his authorized representative, and the judge of the superior court shall have the same power and authority as in any other injunction proceeding, and the defendant shall have the same rights including the right of appeal, as in any other injunction proceeding heard before the superior court. (1967, c. 894, s. 4; 1973, c. 1331, s. 3.)

§ 106-408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice. — All public livestock markets operating under this Article shall have proper facilities for handling livestock and such other equipment as specified by regulation of the North Carolina Board of Agriculture. Scales approved by the North Carolina Division of Weights and Measures shall be provided at public livestock markets where animals are bought, sold or exchanged by weight. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected in accordance with regulations promulgated by the Board of Agriculture pursuant to the authority contained in G.S. 106-416. The market shall keep a complete legible permanent record, including the use of numbered invoices, showing the name and address of the person or firm from whom all animals are received and the name and address of the person or firm to whom sold. Symbols in lieu of names shall not be used. The weight, if sold by weight, and the price paid and the price received shall be recorded on the invoice. Such records as specified in this section shall be available for inspection to the Commissioner of Agriculture or his authorized representative during regular business hours.

The sales of all livestock at livestock auction markets shall start no later than 2:00 P.M.; provided, however, the Commissioner of Agriculture shall have authority to authorize a sale to begin as late as 4:00 P.M. when the sale (i) consists solely of the sale of pigs weighing no more than 150 pounds and sold as feeder pigs, (ii) continues without interruption, and (iii) last[s] no later than 5:00 P.M. The sale of livestock shall be continuous until all are sold.

Each public livestock market operator operating under this Article shall post notice of the day(s) of sale and the starting time in a conspicuous place on the market premises. In the event of subsequent changes in day of sale or starting time, the operator shall post notice on the premises and notify the State Veterinarian in writing at least two weeks in advance of the date of change. (1941, c. 263, s. 3; 1949, c. 997, s. 1; 1961, c. 275, s. 1; 1967, c. 894, s. 5; 1969, c. 983; 1971, c. 739, s. 2.)

Local Modification. — Harnett: 1955, c. 753; Lee: 1957, c. 772; Robeson: 1951, c. 160; 1961, c. 275, s. 1(a).

§ 106-408.1. Market operation fees. — A fee of twenty-five dollars ($25.00) shall be paid by the market operator to the North Carolina Department of Agriculture for each day, or fraction thereof, a sale is held, provided that an additional maximum fee of ten dollars ($10.00) per one-half hour, or fraction thereof, shall be paid to the North Carolina Department of Agriculture for operation after 6:00 P.M. Provided further, that the Board of Agriculture may at its discretion adjust both fees for market operation within the limits set in

this section. A fee to be set by the Board of Agriculture may be charged to the buyer of cattle and swine required to be tested under G.S. 106-409 and 106-410, and the amount collected used to offset the twenty-five dollar ($25.00) market operation fee. All test fees charged in excess of twenty-five dollars ($25.00) shall revert to the North Carolina Department of Agriculture and be payable within 24 hours following the close of a sale day. The starting and finishing time of each sale shall be recorded by the livestock inspector on his report of the sale. A copy of the report shall be given to the market operator or his representative following the sale. Failure to make the required payment within 24 hours following close of a sale day shall be cause for the Commissioner of Agriculture to prohibit, on 72 hours' notice, further sales at the market until the account is paid in full. The operation fee shall be waived when a livestock market operator employs a licensed, accredited veterinarian approved by the State Veterinarian to be present at the market from the starting time of the sale until all livestock to be admitted to the sales barn on that sale day have entered and such work in inspection, testing and vaccination as designated by the State Veterinarian has been completed. (1971, c. 739, s. 3.)

§ 106-409. Removal of cattle from market for slaughter and nonslaughter purposes; identification; permit needed. — No cattle except those for immediate slaughter, shall be removed from any public livestock market except in accordance with this Article and regulations adopted by the North Carolina Board of Agriculture. All cattle removed from any public livestock market for immediate slaughter shall be identified in a manner approved by the Commissioner of Agriculture and the person removing same shall before removal sign a form in duplicate showing the number of cattle, their description, and where same are to be slaughtered or resold for slaughter. Cattle sold for slaughter shall be disposed of in one of the following ways:

(1) Moved directly to a recognized slaughtering establishment for immediate slaughter.
(2) Sold to a dealer bonded under the Packers and Stockyards Act who handles cattle for immediate slaughter.
(3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this Article.

A "buying station" of a slaughterhouse or similar business not operating under a public livestock market permit shall not allow the removal of animals for any purpose other than that of immediate slaughter unless a written permit has been secured from the State Veterinarian or his authorized representative. This provision shall not apply to buying stations operated by feedlot operators buying animals for movement to their own feedlots.

Cattle sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No livestock market operator, or agent or employee thereof, shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, s. 2; 1949, c. 997, s. 2; 1967, c. 894, s. 6.)

§ 106-410. Removal of swine from market for slaughter and nonslaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment. — No swine, except those for immediate slaughter, shall be removed from any public livestock market except in accordance with regulations adopted by the North Carolina Board of Agriculture. All swine removed from any public livestock market for immediate slaughter shall be identified in a manner prescribed by regulation adopted by the North Carolina Board of Agriculture and the person removing same shall sign a form in duplicate showing the number of hogs, their description and where they are to be slaughtered or resold for slaughter. Slaughter hogs may be disposed of in one of the following ways:

(1) Moved directly to a recognized slaughter establishment for immediate slaughter.
(2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles hogs for immediate slaughter.
(3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this Article.

Swine sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No market operator shall allow the removal of any swine from a market in violation of this section.

Swine for breeding or feeding purposes shall not be resold in a livestock market for other than immediate slaughter within 14 days of prior sale at a livestock market unless they are identified as having been previously sold swine at the time of resale. Such identification shall contain the date and place of the prior sale and shall be furnished in writing to the market operator by the seller of said swine.

Provided, however, that the Commissioner of Agriculture may permit swine to be shipped out of the State of North Carolina, under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4; 1967, c. 894, s. 7; 1971, c. 739, s. 5.)

§ 106-411. Regulation of use of livestock removed from market; swine shipped out of State. — Any person or persons who shall remove, or whose agent or employee at the direction of the employer, shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for immediate slaughter only in compliance with this Article and the applicable regulations of the Department of Agriculture. It shall be a misdemeanor for the owner of any cattle, swine or other livestock purchased for immediate slaughter, to order, direct or procure his agent or employee to transport said cattle, swine, or other livestock to any place other than a recognized slaughter plant or as provided in G.S. 106-409 and 106-410; and the agent or employee who transports said animal or animals shall likewise be guilty of a misdemeanor.

Provided that, it shall not be a violation of law to ship swine out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5; 1967, c. 894, s. 8.)

§ 106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc. — No animal known to be affected with or having visible symptoms of a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the Commissioner of Agriculture or his authorized representative. All animals affected with, or exposed to, any contagious or infectious disease of animals or any animal that reacts to an official test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon written permission of the Commissioner of Agriculture or his authorized representative. All animals sold for slaughter under this provision must be moved directly to a recognized slaughter establishment with State or federal meat inspection unless written permission to do otherwise is secured from the State Veterinarian or his authorized representative. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said costs shall constitute a lien against all of said animals. All

trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this Article. (1941, c. 263, s. 7; 1967, c. 894, s. 9.)

§ 106-413. Sale, etc., of certain diseased animals restricted; application of Article; sales by farmers. — No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease, or that the owner or person in charge or a livestock inspector or an approved veterinarian has reason to believe are so affected or exposed; provided, however, that upon written permission of the Commissioner of Agriculture or his authorized representative it shall be lawful to sell, trade, or otherwise dispose of such animals for immediate slaughter at a plant with State or federal meat inspection. The provisions of this Article, including those regulations adopted by the North Carolina Board of Agriculture, shall apply to all animals sold or offered for sale on any public highway, right-of-way, street, or within one-half mile of any public livestock market, or other public place; provided, that the one-half mile provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5; 1967, c. 894, s. 10.)

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification. — No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative. The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.

It shall be a misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative. (1941, c. 263, s. 9; 1967, c. 894, s. 11.)

§ 106-415. Cost of tests, serums, etc. — The cost of all tests, serums, vaccines and other medical supplies necessary for the enforcement of this Article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and the cost shall constitute a lien against all said animals; provided that, the Commissioner of Agriculture, by and with the consent of the Board of Agriculture, is hereby authorized to determine reasonable charges and costs for such tests, serums, vaccines, and other medical supplies; provided further, that an animal which shows a reaction to a test for brucellosis shall be automatically "no-saled" and resold for immediate slaughter and the cost of the test paid by the original seller. (1941, c. 263, s. 10; 1949, c. 997, s. 6; 1957, c. 1269; 1967, c. 894, s. 12.)

§ 106-416. Rules and regulations. — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power

to promulgate and enforce such rules and regulations that may be necessary to carry out the provisions of this Article. This power shall include, but not be confined to, the authority to designate a time after which livestock shall not be allowed to enter a sales barn on the day of a sale. (1941, c. 263, s. 11; 1967, c. 894, s. 13; 1971, c. 739, s. 4.)

§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals. — Any person, firm, or corporation who shall knowingly violate any provisions set forth in this Article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this Article, shall be guilty of a misdemeanor, and shall be fined or imprisoned or both, in the discretion of the court. A market operating under this Article shall not be responsible for the health or death of an animal sold through such market if the provisions of this Article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6; 1967, c. 894, s. 14.)

§ 106-418. Exemption from health provisions. — The health provisions of this Article shall not apply to "no-sale" cattle offered for sale at a public livestock market by a bona fide farmer who has owned them at least 60 days. (1941, c. 263, s. 12½; 1967, c. 894, s. 15.)

ARTICLE 35A.

North Carolina Livestock Prompt Pay Law.

§ 106-418.1. Short title. — This Article shall be known by the short title of "North Carolina Livestock Prompt Pay Law." (1973, c. 38, s. 2.)

§ 106-418.2. Legislative intent and purpose. — The purpose of the Article is to regulate the sale of livestock by auction at public livestock markets and to assure prompt payment for livestock sold. (1973, c. 38, s. 1.)

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

(1) "Banking business day" means a day in which banks are normally open for business in North Carolina.
(2) "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
(3) "Custodial accounts" means custodial accounts for trust funds as explained in the Code of Federal Regulations, January 1, 1972, § 201.42.
(4) The "North Carolina Public Livestock Market Advisory Board" means the Board established under G.S. 106-407.1.
(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).

§ 106-418.4. Duties of Commissioner. — The Commissioner shall regulate, by and with the consent of the Board of Agriculture as provided herein, the payment for livestock sold at auction. (1973, c. 38, s. 4.)

§ 106-418.5. Collection of payment. — Collection of payment for livestock purchased at auction shall be made by the public livestock market on the same date of purchase of the livestock, and the proceeds therefrom shall be deposited by the public livestock market in their custodial account not later than the next

banking business day following the date of sale. Collection for livestock purchased by auction shall be made by cash, check, or draft. There shall be no loans made from the custodial account of any public livestock market to any purchaser of livestock at said sales establishment. Payment shall be made by the public livestock market to the seller of livestock at auction not later than one banking business day after the date of sale of the animal or animals. (1973, c. 38, s. 5.)

§ 106-418.6. Action upon failure of payment. — It shall be the duty and responsibility of each public livestock market to report to the Commissioner within 24 hours after having knowledge that a check or draft issued in payment for livestock has been dishonored or that a buyer of livestock at auction has not fulfilled his obligation to pay for livestock within the prescribed time in G.S. 106-418.5. It shall be the duty and responsibility of the Commissioner to notify all public livestock markets of the fact of dishonor of any such check issued or the failure to honor any draft upon presentation used in payment for livestock or due to the lack of satisfactory payment for livestock. (1973, c. 38, s. 6.)

§ 106-418.7. Authority of Board of Agriculture, North Carolina Public Livestock Advisory Board and the Commissioner. — The Board of Agriculture shall establish rules and regulations pertaining to the purchase and payment of livestock sold in this State at public livestock markets. The North Carolina Public Livestock Advisory Board shall recommend rules and regulations pertaining to the administration of this Article to the Board of Agriculture for their consideration. The Commissioner is authorized to revoke any livestock market operator's license issued or to refuse to issue a livestock market license to any person as hereinafter provided upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules and regulations made and promulgated thereunder; provided that no license shall be revoked or refused until the person, firm or corporation shall have first been given an opportunity to appear at a hearing before the Commissioner or his agent. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence. (1973, c. 38, s. 7.)

ARTICLE 35B.

Livestock Dealer Licensing Act.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-418.8. Definitions. — When used in this Article,

(1) The term "Commissioner" means the Commissioner of Agriculture of North Carolina;

(2) The term "livestock" means cattle, sheep, goats, swine, horses and mules;

(3) The term "livestock dealer" means any person who buys livestock (i) for his own account for purposes of resale, or (ii) for the account of others; and

(4) The term "person" means an individual, partnership, corporation, association, or other legal entity. (1973, c. 196.)

§ 106-418.9. Exemptions. — The provisions of this Article shall not apply to a person who offers for sale or trade only livestock which he has raised or livestock which he owns or has had in his possession for a period of 30 days or longer or who has had the livestock grown under contract, and is not engaged in the business of buying, selling, trading, or negotiating the transfer of livestock. Neither shall this Article apply to a livestock market operator conducting sales in compliance with the Public Livestock Markets Act (General Statutes Chapter 106, Article 35). (1973, c. 196.)

§ 106-418.10. Prohibited conduct. — It shall be unlawful for any person to:

(1) Carry on or conduct the business of a livestock dealer without a current valid license issued by the North Carolina Department of Agriculture under the provisions of this Article;

(2) Fail to keep the records required by G.S. 106-418.13. (1973, c. 196.)

§ 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.

(b) The Commissioner may suspend for a period not to exceed 120 days the license of any livestock dealer whom the Commissioner finds has violated G.S. 106-418.10(2). For a second violation of G.S. 106-418.10(2) within a period of two years, the Commissioner may revoke a dealer's license.

(c) The Commissioner may refuse to issue a license to any person who has (i) within five years of his application therefor, been finally adjudicated as having on two or more occasions violated the provisions of G.S. 106-418.10(1) or (ii) on three or more occasions within five years of his application therefor been finally adjudicated as violating G.S. 106-418.10(2).

(d) All proceedings relative to the suspension, revocation, or refusal of a license shall be conducted pursuant to the provisions of Chapter 150A of the General Statutes. (1973, c. 196; c. 1331, s. 3; 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).

§ 106-418.12. Hearings. — Any hearing required or permitted to be held pursuant to this Article may be conducted by the Commissioner or his delegate and his decision shall be treated for all purposes as that of the Commissioner. (1973, c. 196.)

§ 106-418.13. Maintenance of records. — Every livestock dealer shall keep complete records for at least one year of all transactions involving livestock and permit any authorized agent of the Commissioner to have access to and to copy all records relating to such transactions. Such records shall consist of the approximate age, breed and species of the livestock, the date of sale, name and

address of persons from whom and to whom livestock are sold and traded. (1973, c. 196.)

§ 106-418.14. Penalties. — Any person who violates G.S. 106-418.10(1) may be fined not in excess of one hundred dollars ($100.00) or imprisoned for not in excess of 30 days. For a second or subsequent violation of G.S. 106-418.10(1), a person may be fined not in excess of five hundred dollars ($500.00) or imprisoned for not in excess of six months, or both fined and imprisoned. (1973, c. 196.)

§ 106-418.15. Short title. — This Article may be cited as the "Livestock Dealer Licensing Act." (1973, c. 196.)

ARTICLE 36.

Plant Pests.

§ 106-419. Plant pest defined. — A plant pest is hereby defined to mean any insect, mite, nematode, other invertebrate animal, disease, noxious weed, plant or animal parasite in any stage of development which is injurious to plants and plant products. (1957, c. 985.)

§ 106-419.1. Plants, plant products and other objects exposed to plant pests. — Any plant, plant product, object or article which has been, or which the Commissioner of Agriculture or his agents have reasonable grounds to believe has been exposed to a plant pest, may be treated as a plant pest for the purposes of this Article. (1971, c. 526.)

§ 106-420. Authority of Board of Agriculture to adopt regulations. — The Board of Agriculture is hereby authorized to adopt reasonable regulations to implement and carry out the purposes of this Article as to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State. The Board of Agriculture shall adopt regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for repressing such as cannot be economically eradicated, and for preventing their spread within the State. Regulations may provide for quarantine of areas. It may also adopt reasonable regulations for preventing the introduction of dangerous plant pests from without the State, and for governing common carriers in transporting plants, articles or things liable to harbor such pests into, from and within the State. The Board is authorized, in order to control plant pests, to adopt regulations governing the inspection, certification and movement of nursery stock, (i) into the State from outside the State, (ii) within the State, and (iii) from within the State to points outside the State. The Board is further authorized to prescribe and collect a schedule of fees to be collected for its nursery inspection, nursery dealer certification, and narcissus bulb inspection activities. (1957, c. 985.)

Cross Reference. — See § 106-22(5).

§ 106-420.1. Agreements against plant pests. — The North Carolina Board of Agriculture is authorized to enter into agreements with any agency of the United States or any agency of another state for the eradication, suppression, control and prevention of spread of plant pests. The Commissioner of Agriculture is authorized to enter into agreements with any unit of local government in this State or any organization incorporated or unincorporated

who has an interest in the control of plant pests for the eradication, suppression, control and prevention of spread of plant pests. (1971, c. 526.)

§ 106-421. Permitting uncontrolled existence of plant pests; nuisance; method of abatement. — No person shall knowingly and willfully keep upon his premises any plant or plant product infested or infected by any dangerous plant pest, or permit dangerous plants or plant parasites to mature seed or otherwise multiply upon his land, except under such regulations as the Board of Agriculture may prescribe. All such infested or infected plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the Commissioner of Agriculture, take such measures as may be prescribed to eradicate such pests. The notice shall be in writing and shall be mailed to the usual or last known address, or left at the ordinary place of business, of the owner or his agent. If such person fails to comply with such notice within such reasonable time as the notice prescribes, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to take such measures as shall be necessary to eradicate such pests, and shall compute the actual costs of labor and materials used in eradicating such pests, and the owner of the premises in question shall pay to the Commissioner of Agriculture such assessed costs. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infected or infested plants or soil when done by the order of the Commissioner of Agriculture. (1957, c. 985.)

§ 106-422. Agents of Board; inspection. — The Commissioner of Agriculture shall be the agent of the Board in enforcing these regulations, and shall have authority to designate such employees of the Department as may seem expedient to carry out the duties and exercise the powers provided by this Article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner of Agriculture as agents for the purpose of this Article. The Commissioner of Agriculture, and any duly authorized agent of the Commissioner, shall have the authority to inspect vehicles or other means of transportation and its cargo suspected of carrying plant pests and to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year to determine the presence or absence of injurious plant pests. Any duly authorized agent of the Commissioner shall have authority to stop or cause to be stopped on any highway or other public place, by any law-enforcement officer at the request of said authorized agent of the Commissioner, any vehicle or other means of transportation that is being used, or that the representative of the Commissioner has reasonable grounds to believe is being used, to transport or move any plant, plant product or seed in violation of the provisions of this Article. (1957, c. 985; 1967, c. 976.)

§ 106-423. Nursery inspection; nursery dealer's certificate; narcissus inspection. — The Board of Agriculture shall have the authority to define nursery stock. The Commissioner of Agriculture shall have the right to cause all plant nurseries, and narcissus bulb fields where narcissus bulbs are commercially raised, within the State to be inspected at least once each year for serious plant pests. Every person, firm or corporation buying and reselling nursery stock shall register and secure a dealer's certificate for each location from which plants are sold. (1957, c. 985.)

§ 106-423.1. Criminal penalties; violation of laws or regulations. — If anyone shall attempt to prevent inspection of his premises as provided in the preceding sections, or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaged in the performance of his duties under this Article, or shall violate any provisions of this Article or any regulations of the Board of Agriculture adopted pursuant to this Article, he shall

be guilty of a misdemeanor and shall be fined not less than five ($5.00) nor more than fifty dollars ($50.00), or imprisoned for not less than 10 nor more than 30 days, for each offense. Each day's violation shall constitute a separate offense. (1957, c. 985.)

ARTICLE 37.

Cotton Grading.

§ 106-424. Federal standards recognized. — The standards or grades of cotton established or which may be hereafter established by the Secretary of Agriculture by virtue of acts of Congress shall be recognized as the standards in transactions by and between citizens of this State in transactions relating to cotton. (1915, c. 23, s. 1; C. S., s. 4901.)

§ 106-425. Duplicates of federal samples may be used. — The Commissioner of Agriculture shall obtain from the Secretary of Agriculture a duplicate of each of these samples as represent cotton produced in this State for the use of the citizens of the State who may desire to use them in settlement of any disputed transaction. (1915, c. 23, s. 2; C. S., s. 4902.)

§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture. — The North Carolina Department of Agriculture shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as it may adopt. The North Carolina Department of Agriculture may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this Article. (1915, c. 175, s. 1; C. S., s. 4903; 1967, c. 24, s. 27.)

§ 106-427. County commissioners to cooperate. — Any board of commissioners of any county in North Carolina is authorized and empowered to cooperate with the North Carolina Department of Agriculture in aid of the purposes of this Article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S., s. 4904; 1967, c. 24, s. 27.)

§ 106-428. Grading done at owner's request; grades as evidence. — The expert graders employed by the North Carolina Department of Agriculture, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the Secretary of Agriculture by virtue of any act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State. (1915, c. 175, s. 3; C. S., s. 4905; 1967, c. 24, s. 27.)

§ 106-429. Grader's certificate admissible as evidence. — In the event of any dispute or trial pending in any of the courts of this State, the certificate of any expert grader, employed as above provided, and acknowledged or proven before any clerk of the superior court of any county in the State, shall be admissible in evidence as to the grade or classification of cotton graded or classified by said expert. (1915, c. 175, s. 4; C. S., s. 4906.)

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-429.1. Short title. — The provisions of this Article may be known and designated as the "North Carolina Agricultural Warehouse Act." (1965, c. 1029, s. 2.)

Cited in State v. Woodcock, 17 N.C. App. 242, 193 S.E.2d 759 (1973).

§ 106-430. Purpose of law. — In order to protect the financial interests of North Carolina by stimulating the development of an adequate warehouse system for cotton and other agricultural commodities, in order to enable growers of cotton and other agricultural commodities more successfully to withstand and remedy periods of depressed prices, in order to provide a modern system whereby cotton and other agricultural commodities may be more profitably and more scientifically marketed, and in order to give these products the standing to which they are justly entitled as collateral in the commercial world, a warehouse system for cotton and other agricultural products in the State of North Carolina is hereby established as hereinafter provided. (1919, c. 168, s. 1; 1921, c. 137, s. 1; C. S., s. 4925(a); 1941, c. 337, s. 1.)

Editor's Note. — The 1941 act, amending several sections of this Article and inserting § 106-439, provides that its provisions shall not apply to the storage of tobacco in any form.

Prior Law. — For a full discussion of the purpose and application of the former statutes, see Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-431. Definition of "other agricultural commodities". — The term "other agricultural commodities" as used in this Article shall mean such agricultural commodities other than cotton as shall be designated by the Board of Agriculture, through rules and regulations adopted pursuant to this Article, as suitable to be stored in the warehouses operating under this Article. (1941, c. 337, s. 1½.)

Cited in Lacy v. Hartford Accident & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927); Champion Shoe Mach. Co. v. Sellers, 197 N.C. 30, 147 S.E. 674 (1929).

§ 106-432. Board of Agriculture administers law, makes rules, appoints superintendent. — The provisions of this Article shall be administered by the State Board of Agriculture, through a suitable person to be selected by said Board, and known as the State warehouse superintendent. In administering the provisions of this Article the Board of Agriculture is empowered to make and enforce such rules and regulations as may be necessary to make effective the purposes and provisions of this Article, and to fix and prescribe reasonable charges for storing cotton and other agricultural commodities in the local warehouses and publish the same from time to time as it may deem necessary. (1919, c. 168, s. 2; 1921, c. 137, s. 2; C. S., s. 4925(b); 1941, c. 337, s. 2.)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-432.1. When employer-employee relationship deemed to exist; when person deemed employee, agent or officer of State, Board, superintendent or system. — For the purposes of this Article, the relationship and status of employer-employee shall be deemed to exist only: when created and subsisting under an express contract of employment, written or oral; for a term, or terminable at the will of the employer; wherein the right to make and enter into the contract of hire or employment, and the right to fire, or to discharge, either at will or for cause reserved in the contract of employment, shall remain with the employer, with respect to the person employed; and the right to prescribe, direct, supervise and closely control the duties of the employee and the discharge of his duties of employment, remains substantially with the employer; and where the compensation of the employee is determined, pursuant to contract or otherwise, by the employer and paid wholly or in part from funds of the employer or funds controlled, at least in part, by and available to him.

No person functioning under or pursuant to this Article shall be deemed an employee or agent or officer of the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, or of the State warehouse system, as such: unless in this Article and in pertinent regulations and in an express contract, specifically made and designated an employee or agent of the State or State agency (whether as an assistant, manager, inspector, grader, or classer) and unless actually engaged in and within the scope of his duties as an employee, official, or agent of the State of North Carolina, the Board, the superintendent or the system; and unless such person is compensated in whole or in part from funds of or within the control of the State of North Carolina; and unless subject to the right of the State or any of the State agencies, officers and instrumentalities mentioned, to engage, employ or hire him and to terminate his employment or agency, or to contract with him with respect to the terms and conditions and termination of his agency or employment; and unless subject to the direct control of the State of North Carolina or any of its officers, agencies or entities, with respect to fixing, supervising and controlling his duties of employment or agency. (1965, c. 1029, s. 3.)

§ 106-433. Employment of officers and assistants; licensing private facilities as components of warehouse system; licensing employees of private facilities. — (a) The Board of Agriculture shall have authority to employ a warehouse superintendent and necessary assistants, local managers, examiners, inspectors, expert cotton classers, and such other employees as may be necessary in carrying out the provisions of this Article, and fix and regulate their duties.

(b) The Board of Agriculture acting through the State warehouse superintendent is authorized, from time to time, to license privately owned or operated warehouse facilities as component units of the State warehouse system (whether under a lease of such facilities from the State or not) to operate under and pursuant to the provisions of this Article, and to require or permit such licensed warehouse facility to operate and function as a component of the State warehouse system and to subordinate and maintain the licensed warehouse operation (subject to the supervision and regulation of the State warehouse superintendent) under the United States Warehouse Act, and regulations thereunder, as referred to in G.S. 106-450. Licensing and operation requirements of such licensed component warehouse facilities of the State warehouse system may be determined and regulated generally by rules and regulations prescribed by the Board, and the State warehouse superintendent may, in addition, prescribe special rules, regulations, and conditions applicable to the particular licensed warehouse facility. Any license issued by the Board from time to time may be canceled, revoked, or suspended in the unfettered discretion of the Board or the State warehouse superintendent, with or without cause. Such cancellation, revocation, termination or suspension shall also have the immediate effect of

terminating, revoking, canceling or suspending the operation of the warehouse facility as a component unit in the State warehouse system under the United States Warehouse Act and federal regulations issued thereunder. The Board of Agriculture or the State warehouse superintendent may, in their discretion, require and issue, and from time to time revoke, cancel, terminate or suspend, a license for individual warehouse superintendents, managers, examiners, inspectors, classers, and any other employees of privately owned and licensed warehouse facilities, and may generally fix and regulate their duties. The Board of Agriculture or the State warehouse superintendent may, in their unfettered discretion, take any action, with respect to such employees, deemed necessary to insure, or safeguard, or protect the State warehouse system, and to better carry out and enforce the provisions of this Article, and those provisions of the United States Warehouse Act and regulations thereunder which may be incumbent upon the Board or the superintendent. Such individuals, whether licensed or not, shall not be employees or agents of the "State" (which is defined for the purposes of this section to mean and include the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, or the State warehouse system). (1919, c. 168, s. 3; 1921, c. 137, s. 3; C. S., s. 4925(c); 1965, c. 1029, s. 4.)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-434. Bonds of superintendent, State employees and private warehouse facilities and their employees. — The person named as State warehouse superintendent shall give bond to the State of North Carolina in the sum of fifty thousand dollars ($50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State, to be approved as other bonds for State officers. The State warehouse superintendent shall, to safeguard the interests of the State, require bonds from other State employees or agents authorized in G.S. 106-433(a), and may, both for the purpose of safeguarding the interests of the State and of depositors of agricultural commodities with valid, subsisting, and duly authenticated official negotiable warehouse receipts issued under and pursuant to G.S. 106-441, or the pledgee or transferee of such official negotiable warehouse receipts under G.S. 106-442, require bonds with corporate surety from privately owned and licensed warehouse facilities and from warehouse superintendents, managers and other employees of the licensed warehouse facilities authorized under G.S. 106-433(b). All such bonds shall be in such ample penal sums and secured by corporate surety authorized to do business in the State of North Carolina, as the State warehouse superintendent may direct and find that ordinary business experience in such matters would require. Such bonds shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S., s. 4925(d); 1965, c. 1029, s. 5; 1969, c. 844, s. 9.)

Liability for Loss as Affected by Negligence. — The larceny or loss of cotton from a warehouse through no fault of the warehouseman does not relieve his bond of liability, for a warehouseman is an insurer. Lacy v. Hartford Accident & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927).

Fraudulent Negotiation of Warehouse Receipt. — Where the superintendent of a warehouse delivers cotton, takes the endorsed receipts and, instead of canceling them, negotiates a loan for his own benefit, pledging the receipts as collateral, this is a clear breach of his duty for which an action on his bond will lie. Lacy v. Globe Indem. Co., 189 N.C. 24, 126 S.E. 316 (1925).

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-435. Fund for support of system; collection and investment. — In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a State warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: that on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June 30, 1922, twenty-five cents (25¢) shall be collected through the ginner of the bale and paid into the State treasury, to be held there as a special guarantee or indemnifying fund to safeguard the State warehouse system against any loss not otherwise covered. The State Tax Commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the State treasury to the credit of the State warehouse system. Not less than ten per centum (10%) of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgage notes or bonds to aid and encourage the establishment of warehouses operating under this system, and to aid and encourage the establishment of farm markets designed to serve the marketing, packaging, and grading needs for the sale and distribution of unprocessed farm commodities when adequate markets are not otherwise provided. Such investments shall be made by the Board of Agriculture, with the approval of the Governor and Attorney General: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run not more than 10 years: Provided further, that the interest received from all investments shall be available for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the State Board of Agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of sections 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C. S., s. 4925(e); 1957, c. 1091.)

Constitutionality. — The tax contemplated under this section, being uniform upon those of the class designated, and being laid upon a trade, whether that of cotton ginning or farming, is within the authority conferred on the legislature to further "tax trades," etc., and is constitutional. Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Proper Parties in Action to Enforce Section. — The Governor, the State Board of Agriculture, and the State warehouse superintendent are proper parties plaintiff in an action against the members of the State Tax Commission to require them to provide and enforce the machinery for the collection of the tax provided by this Article. Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Liability of Fund Is Secondary. — A judgment against defendants who had deposited cotton and received negotiable warehouse receipts without disclosing that the cotton was a portion of crops included in recorded liens held by plaintiff, and a judgment against the State Treasurer to be paid from the fund provided by this section, should provide that the liability of the defendants depositing the cotton is primary and the liability of guaranty fund is secondary. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

Recovery on Bond. — Where a warehouse superintendent fraudulently negotiates spent warehouse receipts and the bona fide holder thereof recovers from the indemnifying fund provided by this section, the State may recover on the bond of the superintendent. The bond is the fund primarily liable. Lacy v. Globe Indem. Co., 189 N.C. 24, 126 S.E. 316 (1925). See Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

Loss Due to Failure to Issue Receipt Not Recoverable from State Treasurer. — A recovery may not be had against the State Treasurer out of the fund accumulated under this section, for a loss resulting to plaintiff by failure of a warehouse to issue official receipts for cotton to plaintiff as agreed, the receipts having been issued to the holder of a lien against the cotton and the warehouse having refused delivery of the cotton to plaintiff upon his

demand, since the purpose of the statute is to make warehouse receipts acceptable as collateral, and plaintiff is not the holder of the receipts. Northcutt v. People's Bonded Whse. Co., 206 N.C. 842, 175 S.E. 165 (1934).

Cited in Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

§ 106-436. Registration of gins; gin records and reports; payment of tax. — If the special levy authorized by G.S. 106-446 is made, it shall be the duty of the Commissioner of Agriculture to require the registration of all gins operating within the State, and to furnish the certificates of registration, numbered serially, free upon application; and each person, firm, partnership, or corporation receiving the said certificate of registration shall post it conspicuously in the gin to which it applies. For failure to make application and secure such certificate of registration, and to post same as required in this section, before beginning operation, each person, firm, partnership, or corporation shall be subject to a penalty of five dollars ($5.00) for each and every day such gin shall be operated prior to securing and posting such certificate of registration. The penalty herein provided for shall be recovered by the State in a civil action to be brought by the State Commissioner of Agriculture in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions. Each person, firm, partnership, or corporation operating a gin shall keep a record, on forms furnished or approved by the Commissioner of Agriculture, showing the names and addresses of the owners of the cotton ginned, the number of bales ginned, and the date of each ginning; and each such operator of a gin shall report the number of bales ginned, and pay the tax levied in G.S. 106-435 to the State at least once every 30 days after beginning operation, and shall send a true copy of the report to the Commissioner of Agriculture. (1921, c. 137, s. 6; C. S., s. 4925(f).)

§ 106-437. Qualifications of warehouse manager. — No otherwise qualified person shall be qualified as manager of a warehouse unless the members of the board of county commissioners and the president of some bank in the county in which the warehouse is operated shall certify to the State warehouse superintendent that the person desiring to be warehouse manager is in their opinion a man of good character, competent, and of good reputation, deserving the confidence of the people. (1919, c. 168, s. 6; 1921, c. 137, s. 7; C. S., s. 4925(g); 1965, c. 1029, s. 6.)

Obligations of Warehouse Manager. — For obligations assumed by the manager of a warehouse operating pursuant to the provisions of this Article, see Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

§ 106-438. Warehouse superintendent to accept federal standards. — The State warehouse superintendent shall accept as authority the standards and classifications of cotton established by the federal government. (1919, c. 168, s. 9; 1921, c. 137, s. 8; C. S., s. 4925(h).)

§ 106-439. Leasing and licensing of property by superintendent; manner of operating warehouse system. — The State warehouse superintendent shall have the power to lease for State operation by State employees and for stated terms property for the warehousing by the State of cotton and other agricultural commodities. The State warehouse superintendent shall also have the power to lease from, and to license private or corporate warehouse property for the warehousing of such agricultural commodities under State license, general supervision and control, as a component unit of the State warehouse system. The terms and conditions of the State license shall prevail over the stated terms and conditions of the lease. In no event, however, regardless of the terms and

conditions of the lease, shall any rental be paid by the State until the operating expenses of the leased warehouse facility shall have been paid from the income from the leased warehouse facility. The State shall not be responsible in any case for the payment of rental, except from the income of any leased warehouse facility in excess of the operating expenses of the facilities. The State warehouse superintendent shall fix the terms upon which private or corporate warehouses may be permitted to operate under State license and supervision, and obtain the benefits thereof, regardless of the terms and conditions of any lease agreement between the private or corporate warehouse and the State. It shall be his special duty to foster and encourage the erection of warehouses in the various cotton-growing and agricultural counties of the State for operation under the terms of this Article, and to provide an adequate system of inspection, and of rules, forms, and reports to insure the security of the system, such matters to be approved by the State Board of Agriculture. The violation of such rules shall be a misdemeanor. Cotton and other agricultural products may be stored in such warehouses by any person owning them, and receive all of the benefits accruing from operation of such warehouses under direct State management, or as the case may be, under State license, general supervision and regulation, as component units of the State warehouse system and any person permitted to store cotton or other products in any such warehouse shall pay to the manager of the warehouse such sum or sums for rent or storage as may be agreed upon, subject to G.S. 106-432, by the manager, and such person desiring storage therein. (1919, c. 168, s. 10; 1921, c. 137, s. 9; C. S., s. 4925(i); 1941, c. 337, s. 3; 1965, c. 1029, s. 7.)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

Cited in Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

§ 106-440. Power of superintendent to sue or to be sued; liability for tort. — The said superintendent shall also have the power to sue, or to be sued, in the courts of this State in his official capacity, but not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond. Suits may be brought in the County of Wake or in the county in which the cause of action arose. (1919, c. 168, s. 11; 1921, c. 137, s. 10; C. S., s. 4925(j).)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-441. Grading and weighing of products; negotiable receipts; authentication of receipts. — When agricultural commodities other than cotton have been stored in warehouses operated under this Article and have been graded and standardized in conformity with the grades and standards heretofore or hereafter promulgated by the Board of Agriculture, acting under the provisions of G.S. 106-185 to 106-196, negotiable warehouse receipts of form and design approved by the Board of Agriculture may be issued. As soon as possible after any lint cotton, properly baled, is received for storage, the local manager shall, if it has not been done previously, have it graded and stapled by a federal or State classifier and legally weighed. Official negotiable receipts of the form and design approved by the Board of Agriculture shall be issued for such cotton under the seal and in the name of the State of North Carolina, stating the location of the warehouse, the name of the manager, the mark on said bale, the weight, the grade, and the length of the staple, so as to be able to deliver on surrender of the receipt the identical cotton for which it was given. On request of the depositor, negotiable receipts may be issued under this section omitting the statement of grade or staple, such receipt to be stamped on its face, "Not

graded or stamped on request of the depositor." The warehouse manager shall fill in receipts issued under this section and they shall be signed by him or in his name by his duly authorized agent, and by the State warehouse superintendent or in the name of the State warehouse superintendent by his duly authorized licensee, State employee, or State agent. If the local manager cannot issue a negotiable receipt complete for cotton or other agricultural commodities, he shall issue nonnegotiable memorandum receipts therefor, said memorandum receipts to be taken up and marked "Canceled" by the local manager upon the delivery of negotiable receipts for such commodities. If the official negotiable receipt is issued for cotton or other agricultural commodities of which the manager is the owner, either solely or jointly or in common with others, the fact of such ownership must appear on the face of the receipt. No responsibility is assumed by the State warehouse system for fluctuation in weight or grade or quality due to natural causes; but in other respects the receipts issued under this section for cotton and other agricultural commodities shall be supported and guaranteed by the indemnifying fund provided in G.S. 106-435. (1919, c. 168, s. 12; 1921, c. 137, s. 11; C. S., s. 4925(k); 1925, c. 225; 1941, c. 337, s. 4; 1965, c. 1029, s. 8.)

Warehouseman as Insurer. — Where under a contract of bailment the bailee receives certain bales of cotton and stores them in his warehouse, under agreement to return the identical bales upon return of the warehouse receipts in the manner provided in the contract, the liability of the bailee is that of insurer, and it is liable in damages when it is prevented by theft from performing its contract, though without negligence on its part. Lacy v. Hartford Accident & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927), decided under former law.

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-442. Transfer of receipt; issuance and effect of receipt. — The official negotiable receipt issued under G.S. 106-441 for cotton or other agricultural commodity so stored is to be transferable by written assignment and actual delivery, and the cotton or other agricultural commodity which it represents is to be deliverable only upon a physical presentation of the receipt, which is to be marked "Canceled," with date of cancellation, when the cotton or other agricultural commodity is taken from the warehouse. The said official negotiable receipt carries absolute title to the cotton or other agricultural commodity, and it is the duty of the local manager accepting same for storage to satisfy himself that the depositor has good title to the same. (1921, c. 137, s. 12; C. S., s. 4925(l); 1941, c. 337, s. 5; 1955, c. 523.)

"Satisfy Himself". — This section requires the local manager to satisfy himself, which implies that he must act as a prudent person and exercise reasonable care under existing conditions. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

Sale by Wrongdoer to Innocent Purchaser. — Where wrongdoer obtained cotton by false pretense, stored it and obtained negotiable warehouse receipts without signing the certificates of ownership, and negotiated the receipts to an innocent purchaser for value without notice, by virtue of this section the purchaser obtained absolute title to the cotton. But the true owner is entitled to recover its value against the bond of the warehouse manager and the warehouse if the loss was occasioned by any default in the faithful performance of their obligations under this Article, or the bond of the State warehouse superintendent if the loss was occasioned by his default in the faithful performance of his duties, or, if the loss is not covered by such bonds, then under the indemnifying or guarantee fund created by § 106-435. Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

When Negotiation Not Impaired by Breach of Duty. — Official warehouse receipts are negotiable by written assignment and delivery, and negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, if the person to whom the receipt was negotiated took same for value, in good faith, and without notice of the breach of duty. Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

Facts Held Sufficient to Show Exercise of Due Diligence. — The manager of a warehouse, having had prior dealings with the depositor of cotton, issued negotiable receipts therefor in reliance on his belief in the integrity of such depositor and the depositor's representations and written warranties that there were no liens or valid claims outstanding against the cotton; but the manager failed to examine the records in the office of the register of deeds, which would have shown registered liens against the commodity. It was held that whether the manager exercised the care of a reasonably prudent person in issuing the negotiable receipts is susceptible to different conclusions by reasonable people, and the facts were sufficient to support the inference of fact that the manager exercised due diligence. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

§ 106-443. Issuance of false receipt a felony; punishment. — The manager of any warehouse, or any agent, employee, or servant, who issues or aids in issuing a receipt for cotton or other agricultural commodity without knowing that such cotton or other agricultural commodity has actually been placed in the warehouse under the control of the manager thereof shall be guilty of a felony, and upon conviction be punished for each offense by imprisonment in the State penitentiary for a period of not less than one or more than five years, or by a fine not exceeding 10 times the market value of the cotton or other agricultural commodity thus represented as having been stored. (1919, c. 168, s. 13; 1921, c. 137, s. 13; C. S., s. 4925(m); 1941, c. 337, s. 6.)

Gist of Offense under Section. — Despite its caption, the gist of the offense created by this section is not the issuing of a false warehouse receipt; rather, it is the issuing of a receipt without knowing it to be true. State v. Woodcock, 17 N.C. App. 242, 193 S.E.2d 759 (1973).

When Warehouse Receipts Were "Issued". — Warehouse receipts were "issued" by a warehouse manager within the meaning of this section when, after they had been signed by him, they were at his direction delivered to the bank where they were no longer under his control. State v. Woodcock, 17 N.C. App. 242, 193 S.E.2d 759 (1973).

§ 106-444. Delivery of cotton without receipt or failure to cancel receipt. — Any manager, employee, agent, or servant who shall deliver cotton or other agricultural commodity from a warehouse under this Article without the production of the receipt therefor, or who fails to mark such receipt "Canceled" on the delivery of the cotton or other agricultural commodity, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or imprisoned not more than five years, or both fine and imprisonment, in the discretion of the court. (1919, c. 168, s. 14; 1921, c. 137, s. 14; C. S., s. 4925(n); 1941, c. 337, s. 7.)

§ 106-445. Rules for issuance of duplicate receipts. — A duplicate receipt is authorized to be issued for a lost or destroyed receipt, due record of the original receipt being found upon the books of the warehouse, only upon affidavit of the owner of the original that the original receipt has been lost or destroyed, and upon the owner's giving the State warehouse superintendent bond with approved security in an amount equal to the double value of the cotton or other agricultural commodity represented by the original receipt to indemnify the State and the component warehouse facility and the State warehouse system from loss or damage and the cost of any litigation. In determining the amount of the bond required under this section, the value of cotton shall be estimated at the highest market price of middling cotton during the preceding two years. The value of other agricultural commodities shall be estimated for this purpose in accordance with regulations to be prescribed by the Board of Agriculture. (1919, c. 168, s. 15; 1921, c. 137, s. 15; C. S., s. 4925(o); 1941, c. 337, s. 8; 1965, c. 1029, s. 9.)

§ 106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained. — No debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system created by this Article or the storage of cotton or other agricultural commodities therein, it being the purpose of this Article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the State, except that expenses of supervision shall be paid by the Board of Agriculture. While it is believed that the provisions and safeguards mentioned in this Article, including the bonds required and supplemental indemnifying or guarantee fund mentioned in G.S. 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose special financial benefit it is established, it is hereby provided that in the eventuality the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, the State Board of Agriculture shall have the power to make such losses on cotton good by repeating for another 12 months selected by it the special levy on ginned cotton, as prescribed in G.S. 106-435 for the two years ending June 30, 1923, and the State Board of Agriculture shall have the power to make good such losses on soybeans, corn, wheat and grain sorghum by levying an assessment of one cent (1¢) per bushel on each bushel of soybeans, corn, wheat, and grain sorghum sold by producers through commercial channels for such period of time as is necessary to pay off said loss. The assessment shall be paid by the producer of the soybeans, corn, wheat and grain sorghum to the collecting handler. The collecting handler shall be any person, firm, corporation or other legal entity who purchases soybeans, corn, wheat or grain sorghum from the producer. The collecting handler shall collect the assessment at the time he first makes any payment or any credit to the producer's account for the soybeans, corn, wheat or grain sorghum. Each collecting handler shall transmit assessment and reports on assessments to the North Carolina Department of Agriculture no later than the tenth day of the month next following the month in which the assessment was or should have been levied. The report which shall be sent to the Department of Agriculture with the assessment shall contain the following information:

(1) Date of report;
(2) Reporting period covered by report;
(3) Name and address of collecting handler;
(4) Listing of all producers from whom the collecting handler collected the assessment, and total number of bushels of each grain for each producer on which the collecting handler collected the assessment.

Failure of the collecting handler to collect the assessment shall not relieve the collecting handler of his obligation to remit the assessment to the North Carolina Department of Agriculture. Each collecting handler required to make reports pursuant to this Article shall maintain such books and records as are required by the Commissioner of Agriculture or his authorized representative, and they shall be available for inspection for at least two years beyond the 12-month period of their applicability. The North Carolina Department of Agriculture shall have authority to make reasonable rules and regulations for the collection of this assessment and for the enforcement of this section. The funds collected pursuant to this section shall be held in the State treasury to the credit of the State warehouse system and shall be a part of the guarantee fund provided for in G.S. 106-435. (1919, c. 168, s. 16; 1921, c. 137, s. 16; C. S., s. 4925(p); 1941, c. 337, s. 9; 1965, c. 1029, s. 10; 1967, c. 560.)

§ 106-447. Insurance of cotton; premiums; lien for insurance and storage charges. — The superintendent shall insure, or shall require the local manager to insure and keep insured for its full value, upon the best terms obtainable, by individual or blanket policy, all cotton and other agricultural commodities on

storage against loss by fire and lightning. In case of loss, the superintendent shall collect the insurance due and pay the same, ratably, to those lawfully entitled to it, insurance policies to be in the name of the State and the premium collected from the owners of the cotton and other agricultural commodities, the State to have a lien on cotton and other agricultural commodities for insurance and storage charges as in the case of other public warehouses in the State. (1919, c. 168, s. 17; 1921, c. 137, s. 17; C. S., s. 4925(q); 1941, c. 337, s. 10; 1943, c. 474.)

§ 106-448. Superintendent to negotiate loans on receipts and sell cotton for owners. — The State warehouse superintendent, in addition to the duties hereinbefore vested in him, is also permitted and empowered, upon the request of the owner or owners of the warehouse receipts and cotton or other agricultural commodities stored in such warehouses to aid, assist, and cooperate, or as the duly authorized agent of such owner or owners (which authorization shall be in writing), to secure and negotiate loans upon the warehouse receipts. And upon like written request or authorization of said owner or owners, and his or their duly authorized agent, he may sell and dispose of such warehoused cotton or other agricultural commodities for such owner or owners, either in the home or foreign markets, as may be agreed upon between such owner or owners and the said superintendent, in writing. And for said loan or sales the said superintendent shall charge reasonable and just commissions, without discrimination, all of which shall be accounted for and held as part of the fund for the maintenance and operation of the State warehouse system: Provided, however, that the State incurs no liability whatever for any act or representation of the superintendent in exercising any of the permissions or powers vested in him in this section: Provided, further, that the bond of the superintendent will be liable for any unfaithful or negligent act of his by reason of which the owner or owners of such warehoused cotton or other agricultural commodities suffers damage or loss. (1919, c. 168, s. 18; 1921, c. 137, s. 18; C. S., s. 4925(r); 1941, c. 337, s. 11.)

§ 106-449. Construction of 1941 amendment. — The provisions of Chapter 337 of the Public Laws of 1941, amending this Article, shall not apply to the storage of tobacco in any form. (1941, c. 337, s. 11½.)

§ 106-450. Compliance with United States warehouse law. — (a) The State warehouse superintendent may,

(1) Upon approval of the Board of Agriculture, operate or cause to be operated by State employees or State agents under his immediate and direct supervision and control, any or all State owned or State leased warehouses, or

(2) May cause to be operated privately owned and operated, but State licensed and generally regulated and supervised warehouses, also leased by the State warehouse superintendent, and forming component units of the State warehouse system,

(3) All under and pursuant to the provisions of this Article, subject to the United States Warehouse Act and lawful regulations issued thereunder.

(b) The State warehouse superintendent is authorized, and the owners, operators, officers, and employees of affiliated State licensed component units in the State warehouse system are directed, to comply with the said United States Warehouse Act and such lawful regulations as may be issued thereunder, by the federal authorities, and such additional State rules and regulations which may be imposed, under and pursuant to this Article, upon all parties concerned in the operation of the State warehouse system. (1921, c. 137, s. 19; C. S., s. 4925(s); 1965, c. 1029, s. 11.)

§ 106-450.1. Bond of State warehouse system under United States Warehouse Act. — Any bond required by the provisions of the United States Warehouse Act on behalf of the State warehouse system shall be procured in the name of, and shall show as the principal obligor thereon, the State of North Carolina and the obligations of such bond shall rest upon the State of North Carolina, acting through the State Board of Agriculture or the State warehouse superintendent on behalf of the State warehouse system. Any right of indemnity over as against the principal obligor for any loss under the bond by any surety, shall principally and primarily be directed against and encumber the State Warehouse Indemnifying or Guaranty Fund provided for under the terms and provisions of this Article, including, but not restricted to, G.S. 106-435. Any cause of action arising out of or incidental to any bond furnished under and pursuant to the United States Warehouse Act shall be and constitute a claim and suit against the State of North Carolina, whether the State of North Carolina is designated as party defendant in any such action or not, and whether the action is brought against the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, the State warehouse system, the Treasurer of the State of North Carolina as custodian of the State Indemnity and Guaranty Fund, or any of them, or any individual holding an office or acting as agent of the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, the State warehouse system or other legal entity acting by and for the State or any of its agencies or instrumentalities in the execution of this Article. There shall be no liability or cause of action against any individual acting as an officer, employee, agency or instrumentality of the State in the execution of this Article under any bond furnished by the State under and pursuant to the United States Warehouse Act, except as in this Article otherwise provided. (1965, c. 1038.)

§ 106-451. Numbering of cotton bales by public ginneries; public gin defined. — (a) Any person, firm or corporation operating any public cotton gin, that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways:

(1) Attach a metal strip carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number.

(2) Impress the serial number upon one of the bands or ties around the bale.

Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days.

(b) Any person, firm or corporation buying a bale of cotton on which this number has: (i) been removed; (ii) defaced by cutting; (iii) or otherwise altered, unless a new metal strip is attached and impression made by the original gin ginning said bale or bales of cotton, shall be guilty of a misdemeanor for each and every offense and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days.

(c) Every public ginnery, as defined in subsection (a) of this section, shall keep a book in which shall be registered all cotton received at the gin to be ginned in the name of the owner of the cotton and the name of the person from whom the cotton is received for ginning. Any person giving false information for entry in this book shall be guilty of a misdemeanor. There shall be furnished by the ginner for each bale of cotton ginned, to the owner thereof, a gin ticket bearing the name of the gin, the serial number of the bale prescribed by subsection (a) of this section, the weight of the bale and the name of the owner of the cotton. Such gin ticket shall be presented, for comparison with the serial number

prescribed in subsection (a) of this section, at the time such bale is sold or offered for sale, as prima facie evidence of ownership thereof. (1923, c. 167; 1949, c. 824.)

§ 106-451.1. Purchasers of cotton to keep records of purchases. — Every cotton broker or other person buying cotton from the producer after it is ginned shall keep a record of such purchase for a period of one year from date of purchase. This record shall contain the name and address of the seller of the cotton, the date on which purchased, the weight or amount and the serial number of the bales provided for by G.S. 106-451. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court: Provided, any person, firm or corporation who purchases cotton which has been ginned outside this State shall be required to keep only so much of the records hereinabove specified as purchasers are required to keep by the law of the state where said cotton was ginned. (1945, c. 61; 1947, c. 977.)

ARTICLE 39.

Leaf Tobacco Warehouses.

§ 106-452. Maximum warehouse charges. — The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz: for auction fees, fifteen cents (15¢) on all piles of 100 pounds or less, and twenty-five cents (25¢) on all piles over 100 pounds; for weighing and handling, ten cents (10¢) per pile for all piles less than 100 pounds, for all piles over 100 pounds at the rate of ten cents (10¢) per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum (2½%): Provided that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed three and one-half per centum (3½%). There may also be a basket fee of twenty-five cents (25¢) per basket on all burley leaf tobacco sold in such warehouses. (1895, c. 81; Rev., s. 3042; C. S., s. 5124; 1941, c. 291; 1955, c. 1029.)

Warehouse System Authorized as Aid in Marketing of Leaf Tobacco. — See Champion Shoe Mach. Co. v. Sellers, 197 N.C. 30, 147 S.E. 674 (1929).

Cited in Townsend v. Yeomans, 301 U.S. 441, 57 S. Ct. 842, 81 L. Ed. 1265 (1937); Davies Whse. Co. v. Bowles, 321 U.S. 144, 64 S. Ct. 474, 88 L. Ed. 635 (1944).

§ 106-453. Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed. — All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person 18 years of age or older, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ....., and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Immediately upon the weighing of any lot or lots of tobacco, the tobacco weigher shall furnish, upon request, to the person delivering such tobacco to the scale for weighing a true list showing the number of baskets of tobacco weighed and the individual weight of each such basket so presented. (1895, c. 81, s. 2; Rev., s. 3043; C. S., s. 5125; 1951, c. 1105, s. 1; 1971, c. 1085, s. 2.)

Cross Reference. — As to provisions requiring accounts of sales and reports to Commissioner, see § 106-456 et seq.

§ 106-454. Warehouse proprietor, etc., to render bill of charges; penalty. — The owner, operator, or person in charge of each warehouse shall render to each seller of tobacco at the warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charge or fees to be made or accepted. Any person, firm, corporation, or any employee thereof, violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars ($100.00) nor more than two hundred and fifty dollars ($250.00) and/or imprisoned not to exceed 30 days for the first offense, and for the second or additional offenses fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000) or imprisoned for not less than 30 days or more than six months, or both fined and imprisoned, in the discretion of the court. (1895, c. 81, ss. 3, 4; Rev., s. 3044; C. S., s. 5126; 1973, c. 1305.)

§ 106-455. Tobacco purchases to be paid for by cash or check to order. — The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may arise by law, be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by fine not exceeding one hundred dollars ($100.00) or imprisonment not exceeding 30 days, or both, in the discretion of the court. (1931, c. 101, s. 1; 1939, c. 348.)

Editor's Note. — For discussion of this section prior to the 1939 amendment, see 9 N.C.L. Rev. 387.

ARTICLE 40.

Leaf Tobacco Sales.

§ 106-456. Accounts of warehouse sales required. — On and after the first day of August, 1907, the proprietor of each and every leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (1907, c. 97, s. 1; C. S., s. 4926.)

Cross Reference. — As to effective period of lien upon leaf tobacco sold in auction warehouse, see § 44-69.

§ 106-457. Monthly reports to Commissioner; results classified. — On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the Commissioner of Agriculture at Raleigh, North Carolina. The report so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the

account of some other warehouse. (1907, c. 97, s. 2; C. S., s. 4927; Ex. Sess. 1921, c. 76.)

§ 106-458. Commissioner to keep record and publish in Bulletin. — The Commissioner of Agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the fifteenth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the Bulletin issued by the agricultural department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the State, or having a large circulation therein. (1907, c. 97, s. 3; C. S., s. 4928; Ex. Sess. 1921, c. 76.)

§ 106-459. Penalty for failure to report sales. — Any warehouse failing to make the report as required by G.S. 106-457 shall be subject to a penalty of twenty-five dollars ($25.00) and the costs in the case, to be recovered by any person suing for same. (1915, c. 31, s. 1; C. S., s. 4929; 1973, c. 108, s. 56.)

§ 106-460. Commissioner to publish names of warehouses failing to report sales; certificate as evidence. — The Commissioner shall, on the fourteenth day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this Article.

The certificate of the Commissioner under seal of the Department shall be admissible as evidence the same as if it were deposition taken in form as provided by law. (1915, c. 31, ss. 2, 3; C. S., s. 4930; Ex. Sess. 1921, c. 76.)

§ 106-461. Nested, shingled or overhung tobacco. — It shall be unlawful for any person, firm or corporation to sell or offer to sale, upon any leaf tobacco warehouse floor, any pile or piles of tobacco, which are nested, or shingled, or overhung, or either as hereinafter defined:

(1) Nesting tobacco: That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the bottom of such pile for the purpose of inspection;

(2) Shingling tobacco: That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and

(3) Overhanging tobacco: This is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco. (1933, c. 467, s. 1.)

§ 106-462. Sale under name other than that of true owner prohibited. — It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

§ 106-463. Allowance for weight of baskets and trucks. — It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933, c. 467, s. 3.)

§ 106-464. Violation made misdemeanor. — Any person, firm or corporation violating the provisions of G.S. 106-461 to 106-463 shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1933, c. 467, s. 4.)

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; fire insurance and extended coverage required; price fixing prohibited. — Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as nonstock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

Each tobacco board of trade organized pursuant to this section shall, on or before June 1, 1973, by regulation, require that all auction warehouse firms which are members of, or may hereafter request membership in, such board of trade for the purpose of displaying for sale and selling leaf tobacco, deposit with the board of trade prior to the market opening, a copy of a policy of fire insurance and extended coverage in a company licensed to do business in North Carolina to fully insure, as determined by the board of trade, the market value of the maximum volume of tobacco that will be weighed and left displayed for sale on said warehouse floor at any time during the marketing season. Warehouses using mechanized conveyor-line auction sales where tobacco is not displayed for sale on sales floor would be excluded from the requirement of this regulation.

In determining the market value and maximum volume of tobacco that will be weighed and placed on said warehouse floor at any one time, the board of trade shall use as criteria the prior season's official gross average price for that belt, as recorded by the North Carolina Department of Agriculture and the maximum limit of daily sales, as recommended by the currently functioning flue-cured and burley tobacco marketing organizations, applied to each warehouse based on the firm's pro rata share of the market's maximum limit daily sales opportunity, multiplied times the number of days of sales that said warehouse plans to place on sales floor at any one time, including any and all tobacco weighed and deposited with the warehouse as bailee for future sale. The data relating to the official average price and the maximum limits of daily sales shall be assembled and supplied by the North Carolina Commissioner of Agriculture or his representative to the board of trade in each tobacco market in North Carolina, at least 30 days prior to the opening of markets in each belt.

It shall be unlawful for any person, firm, or corporation to operate an auction sale in said market until said policy is so deposited with and approved by the board of trade. The board of trade shall enjoin the sale of tobacco by any warehouse firm that fails to so deposit a policy of fire insurance and extended coverage with the board.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to wit:

A membership fee of fifty dollars ($50.00) in those towns in which less than 3,000,000 pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; a fee of one hundred dollars ($100.00) in those towns in which during said period of time more than 3,000,000 and less than 10,000,000 pounds of tobacco was sold; a fee of one hundred fifty dollars ($150.00) in those towns in which during said period of time more than 10,000,000 and less than

25,000,000 pounds of tobacco was sold; a fee of three hundred dollars ($300.00) in those towns in which during said period of time more than 25,000,000 pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

Membership in the several boards of trade may be divided into two categories:

(1) Warehousemen;

(2) Purchasers of leaf tobacco other than warehousemen.

Purchasers of leaf tobacco may be: (i) participating or (ii) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this section or coming within the provisions of this section, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable for any of the acts, omissions or commissions of the several tobacco boards of trade.

It shall be unlawful and punishable as of a misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. Any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268; 1951, c. 383; 1973, c. 96.)

Interests of Warehousemen, Buyers and Sellers of Tobacco. — The warehousemen have an economic stake in the markets' operations, but the markets exist for the purpose of serving the interests of buyers and sellers of tobacco. Those interests deserve inquiry and consideration in an appraisal of any plan containing market restrictions and limitations. Robertson v. Federal Trade Comm'n, 415 F.2d 49 (4th Cir. 1969).

The very nature of leaf tobacco demands regulation of its sale, as this section recognizes and the decisions of the courts confirm. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Jurisdiction of Federal Trade Commission. — There is a substantial public interest in maintaining free and open competition among warehousemen on tobacco auction markets. The public interest often is specific and substantial, because the unfair method employed threatens the existence of present or potential competition. That is the basis for the jurisdiction of the Federal Trade Commission in a case involving regulations adopted pursuant to this section governing the allocation of selling time to tobacco warehouses. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

The decisions of the North Carolina courts since the enactment of this section make it clear that the sale of tobacco at auction is of great public importance to the State of North Carolina, but they also show that the operation of the business is in the hands of private parties. A tobacco board of trade is organized primarily for the benefit of those engaged in the business; its articles of association and bylaws constitute a contract amongst the members by which each member consents to reasonable regulations pertaining to the conduct of the business. Such a board is not an instrumentality of the State, and its activities are subject to the jurisdiction of the Federal Trade Commission. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

Unfair Trade Regulations Are Subject to Correction by Federal Trade Commission, Not Courts. — The Federal Trade Commission rather than the courts has the expertise, the

power, and the implements to explore and correct unfair trade regulations. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Members Have Technical Representation through Board. — Under this section, tobacco purchasers are, or may be, members of a board of trade. To the extent that they are, they have had technical representation through the board of trade. Roberts v. Fuquay-Varina Tobacco Bd. of Trade, Inc., 405 F.2d 283 (4th Cir. 1968).

By becoming a member of a board a person consents to be bound by its reasonable regulations. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Rules and Regulations of Board. — The authority granted to a tobacco board of trade, under and by virtue of the provisions of this section, to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on warehouse floors where an auction market is situated, is sufficiently broad to include the authority to make reasonable rules and regulations in respect to allotment of sales time. Cooperative Warehouse v. Lumberton Tobacco Bd. of Trade, 242 N.C. 123, 87 S.E.2d 25 (1955); Day v. Asheville Tobacco Bd. of Trade, 242 N.C. 136, 87 S.E.2d 18 (1955).

The articles of association for the purposes expressed in the charter and bylaws of a tobacco board of trade, organized and existing under and by virtue of this section, constitute a contract between it and its members, and as a consequence of membership in the corporation for mutual membership, each member is deemed to have consented to all reasonable rules and regulations pertaining to the business. Cooperative Warehouse v. Lumberton Tobacco Bd. of Trade, 242 N.C. 123, 87 S.E.2d 25 (1955); Day v. Asheville Tobacco Bd. of Trade, 242 N.C. 136, 87 S.E.2d 18 (1955).

Regulations adopted by a local tobacco board of trade involving allocation of selling time to warehouses were held in the instant case to unreasonably and unduly restrain trade in the purchase and sale of tobacco and to constitute unfair methods of competition and unfair acts or practices in commerce within the meaning of the Federal Trade Commission Act. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

A tobacco board of trade has no authority to legislate. It cannot create a duty where the law creates none. The legislature has the authority to regulate, within constitutional limits, the sale of leaf tobacco upon the auction markets of this State, and in doing so may prescribe standards of conduct to be observed by those who conduct auction warehouses as well as others participating in the sales. But this is a nondelegable power. Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co., 235 N.C. 737, 71 S.E.2d 21 (1952).

Board Has No Right to Establish Sales and Require Buyers to Purchase Thereat. — This section is silent upon the question of the number of sales and prescribes no standard by which the number of sales may be determined. Therefore, in the absence of an agreement, either expressed or implied, a board organized under this section has no right to establish sales and require buyers to purchase thereat. Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co., 235 N.C. 737, 71 S.E.2d 21 (1952).

Regulation adjusting divisions of selling time to establish an equitable market participation did not constitute conspiracy, monopoly, or an unreasonable restraint of trade. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Applied in Roberts v. Fuquay-Varina Tobacco Bd. of Trade, Inc., 220 F. Supp. 608 (E.D.N.C. 1963), aff'd, 332 F.2d 521 (4th Cir. 1964).

ARTICLE 41.

Dealers in Scrap Tobacco.

§ 106-466. Application for license; amount of tax; exceptions. — Every person, firm or corporation desiring to engage in the business of buying and/or selling scrap or untied tobacco in the State of North Carolina shall first procure from the Secretary of Revenue of North Carolina a license so to do, and for that purpose shall file with the said Secretary of Revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in the said business and the place or places where his, their or its principal office (if any) shall be situated; and shall pay to the said Secretary of Revenue of North Carolina, to be placed in the general fund for the use of the State, an annual license tax of five hundred dollars ($500.00) for each and every county in North Carolina in which the applicant proposes to engage in such business. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be

issued for less than the full amount of tax prescribed. Any lot of parts of leaves of tobacco, or any lot in which parts of leaves of tobacco are commingled with whole leaves of tobacco, or any other leaf or leaves of tobacco, or parts of leaves of tobacco not permitted, under the rules and regulations of tobacco warehouses, to be offered for sale at auction on tobacco warehouse floors, shall be deemed to be "scrap or untied" tobacco within the meaning and purview of this Article: Provided, that the tax herein levied shall not apply in cases where the producer delivers his scrap or untied tobacco to a tobacco warehouse or tobacco redrying plant. (1935, c. 360, s. 1; 1937, c. 414, s. 1; 1939, c. 389, s. 1; 1941, c. 246; 1973, c. 476, s. 193.)

Validity. — This Article, imposing a license tax on dealers in scrap tobacco, is not vague or uncertain, and is uniform and equal in its application. Ficklen Tobacco Co. v. Maxwell, 214 N.C. 367, 199 S.E. 405 (1938), holding that the former tax of $1,000 was not excessive as a matter of law.

§ 106-467. Report to Commissioner of Agriculture each month. — On or before the tenth day of each month every person, firm or corporation engaged in the business set forth in G.S. 106-466 shall make a report to the Commissioner of Agriculture of North Carolina, setting forth the number of pounds of scrap or untied tobacco purchased and the price paid therefor during the preceding month in each of the counties in which the said person, firm or corporation is doing business and also the purposes for which such scrap tobacco is bought or sold. (1935, c. 360, s. 2; 1937, c. 414, s. 2.)

§ 106-468. Display of license; no fixed place of business; agents, etc.; licensing of processors, redriers, etc. — (a) If any person, firm or corporation licensed to engage in the business aforesaid has a warehouse, office or fixed place of business, the license issued by the Secretary of Revenue as herein provided shall be displayed in a conspicuous place in said warehouse, office or place of business. Such license so obtained shall not be transferable and shall authorize such person, firm or corporation to engage in the business described in this Article only on the premises described in the license. Only one original license shall be issued to any person, firm or corporation, which will authorize such person, firm or corporation to engage in such business in the county for which such license is issued. If such person, firm or corporation shall have no warehouse, office, or fixed place of business in the county where such business is carried on, if the original license is to be issued to a firm, partnership or copartnership, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such firm, partnership or copartnership. If such license is to be issued to a corporation, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such corporation and the license so issued will authorize only the individual designated thereon to engage in such business for or on behalf of such person, firm, partnership, copartnership or corporation, and none other. If such person, firm or corporation carries on the business herein described through agents, representatives, district attorneys, or peddlers other than those named on the original license issued, as herein provided, additional and like licenses, for which there shall be paid the sum of two hundred fifty dollars ($250.00) shall be obtained for such additional agents, representatives, district attorneys, or peddlers for each county in which such business is carried on, in the manner hereinafter set out, and all original and additional licenses issued to persons, firms or corporations which have no warehouse, office or fixed place of business shall be carried on the person of such licensee and shall be exhibited when requested or demanded by any law-enforcement officer of North Carolina, or any person from whom such tobacco is bought, or to whom the same may be sold.

Any person, firm or corporation applying for and obtaining a license under this Article may employ traveling representatives, agents, peddlers, or district attorneys for the purpose of buying and/or selling scrap tobacco, but such traveling representatives, agents or peddlers shall apply for and obtain from the Secretary of Revenue a separate additional license on behalf of such person, firm or corporation whom or which he represents and shall pay for such license a tax of two hundred fifty dollars ($250.00) for each additional license so issued. Every such additional license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Such traveling representative, agent or peddler engaged in such business shall carry on his person the license so obtained, which shall be exhibited when requested or demanded by any law-enforcement officer of North Carolina or any person from whom such tobacco is bought or to whom the same may be sold.

(b) Any such person, firm or corporation described in subsection (a) of this section, who is engaged in the business of buying and/or selling scrap tobacco within the meaning of this Article, and who maintains and operates in connection therewith a plant or factory where such scrap tobacco is processed, manufactured, or redried, shall apply for and obtain from the Secretary of Revenue a license to engage in such business and for that purpose shall file with the Secretary of Revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in such business, and the place or places where his, their, or its principal office is situated, and shall pay for such license a tax of five hundred dollars ($500.00) for each county in this State in which the applicant proposes to engage in such business. The license so issued shall authorize the person, firm or corporation to whom it is issued to engage in such business only on the premises designated in the license. Persons, firms or corporations taxed under this subsection shall not be required to pay the license tax provided for in subsection (a) of this section. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue and no license shall be issued for less than the full amount of the tax prescribed. (1935, c. 360, s. 3; 1937, c. 414, s. 3; 1939, c. 389, s. 2; 1973, c. 47, s. 2; c. 476, s. 193.)

§ 106-469. Violation made misdemeanor. — Any person, firm or corporation violating any of the provisions of this Article shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court. (1937, c. 414, s. 4.)

§ 106-470. Exemptions. — Nothing in this Article shall have any effect upon or apply to any stocks of leaf and scrap tobacco grown prior to the year 1937, or to purchases or sales of scrap or untied tobacco which has been processed, redried or manufactured. (1937, c. 414, s. 4½; 1939, c. 389, s. 3.)

ARTICLE 42.

Production, Sale, Marketing and Distribution of Tobacco.

§§ 106-471 to 106-489: Repealed by Session Laws 1955, c. 188, s. 1.

Editor's Note. — This Article, known as the Tobacco Compact Act, depended upon similar action in other tobacco-producing states, which failed to materialize, and consequently was of no avail. 15 N.C.L. Rev. 323.

ARTICLE 43.

Combines and Power Threshers.

§§ 106-490 to 106-495: Repealed by Session Laws 1955, c. 268, s. 2.

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

ARTICLE 44.

Unfair Practices by Handlers of Fruits and Vegetables.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-496. Protection against unfair trade practices. — The Board of Agriculture is hereby authorized to make such rules and regulations as it deems necessary to protect producers of fruits and vegetables from loss caused by financial irresponsibility and unfair, harmful or unethical trade practices of handlers who incur financial liability for the purchase or production of fruits and vegetables. A "handler," as used herein, is a person, firm, corporation or other legal entity or his agent or employee who enters into a written contract for the purchase from or production by a producer of fruits and vegetables. (1941, c. 359, s. 1; 1971, c. 1064, s. 1.)

Commissioner Is Not Individually Liable. — The Commissioner of Agriculture could not be held individually liable to producers of soybeans for failure to require a soybean dealer to obtain a permit to operate as a grain dealer and to furnish bond as set forth in § 106-496 et seq., since the sections did not place a mandatory duty on the Commissioner to require permits or bonds, and there was no liability provision in the statute. Etheridge v. Graham, 14 N.C. App. 551, 188 S.E.2d 551 (1972), decided prior to 1971 amendments to this Article.

§ 106-497. Permits required. — A handler of fruits and vegetables shall not enter into a written contract with a producer until he obtains a written permit from the Commissioner of Agriculture. The Board of Agriculture may prescribe by regulation the form of the application for a permit, the information to be furnished to the Commissioner by the applicant for a permit and the date for filing the application. A permit shall not be issued until the applicant files on or before the date set by the Board a written request with the Commissioner and files with the request two copies of the applicant's proposed contract. A penalty of twenty-five dollars ($25.00) shall be paid by the applicant if the application is filed after the date established by the Board and no permit shall be issued until such penalty is paid. Any penalties collected by the Commissioner shall be used to help defray the costs of administering Article 44 of Chapter 106.

This Article shall not apply to transactions by a handler with a producer on a cash basis. "Cash" as used herein shall include bank bills, checks drawn on banks and bank notes. (1941, c. 359, s. 2; 1971, c. 1064, s. 2.)

§ 106-498. Bond required. — No permit shall be issued to a handler until such handler has furnished the Commissioner of Agriculture a bond satisfactory to the Commissioner in an amount of not less than ten thousand dollars ($10,000).

The Commissioner may require a new bond or he may require the amount of any bond to be increased if he finds it necessary for the protection of the producer. Such bond shall be payable to the State and shall be conditioned upon the fulfilling of all financial obligations incurred by the handler with all producers with whom the handler contracts. Any producer alleging any injury by the fraud, deceit, willful injury or failure to comply with the terms of any written contract by a handler may bring suit on the bond against the principal and his surety in any court of competent jurisdiction and may recover the damages found to be caused by such acts complained of. (1941, c. 359, s. 3; 1967, c. 154; 1971, c. 1064, s. 3.)

§ 106-499. Contracts between handlers and producers; approval of Commissioner. — All contracts filed with the Commissioner by an applicant shall be approved by the Commissioner before a permit is issued. The Commissioner may withhold his approval in his discretion if he is of the opinion that the contract is illegal or unfair to the producer, or that the contractor is insolvent or financially irresponsible, or if for any other cause it reasonably appears to him that the contract in question might defeat the purpose of this Article. (1941, c. 359, s. 4; 1971, c. 1064, s. 4.)

§ 106-500. Additional powers of Commissioner to enforce Article. — In order to enforce this Article, the Commissioner of Agriculture, upon his own motion or upon the verified complaint of any producer, shall have the following additional powers:

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

(2) To hold hearings after due notice to interested parties and opportunity to all to be heard; to administer oaths, take testimony and issue subpoenas; to require witnesses to bring with them relevant books, papers, and other evidence; to compel testimony; to make written findings of fact and on the basis of these findings to issue orders in controversies before him, and to revoke the permits of persons disobeying the terms of this Article or of rules, regulations, and orders made by the Board or the Commissioner. Any party disobeying any order or subpoena of the Commissioner shall be guilty of contempt, and shall be certified to the superior court for punishment. Any party may appeal to the superior court from any final order of the Commissioner;

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

(4) This Article will not apply to peanuts and corn grown under contract for seed purposes. (1941, c. 359, s. 5; 1971, c. 1064, ss. 5, 6.)

§ 106-501. Violation of Article or rules made misdemeanor. — Any person who violates the provisions of this Article or the rules and regulations promulgated thereunder shall be guilty of a misdemeanor, and shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both. (1941, c. 359, s. 6.)

ARTICLE 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-502. Land set apart. — For the purpose of the operating of a State fair, expositions and other projects which properly represent the agricultural, manufacturing, industrial and other interests of the State of North Carolina, there is hereby dedicated and set apart 200 acres of land owned by the State or any department thereof within five miles of the State Capitol, the particular acreage to be selected, set apart, and approved by the Governor and Council of the State of North Carolina. (1927, c. 209, s. 1; 1959, c. 1186, s. 1.)

§ 106-503. Board of Agriculture to operate fair. — The State fair and other projects provided for in G.S. 106-502, shall be managed, operated and conducted by the Board of Agriculture established in G.S. 106-502. To that end, said Board of Agriculture shall, at its first meeting after the ratification of this section, take over said State fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State fair and shall operate said State fair and other projects with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said fair and other projects, and/or lease said fair properties so as to provide a State fair. (1931, c. 360, s. 3; 1959, c. 1186, s. 2.)

§ 106-503.1. Board authorized to construct and finance facilities and improvements for fair. — (a) Borrowing Money and Issuing Bonds. — For the purpose of building, enlarging and improving the facilities on the properties of the State fair, the State Board of Agriculture is hereby empowered and authorized to borrow a sum of money not to exceed one hundred thousand dollars ($100,000), and to issue revenue bonds therefor, payable in series at such time or times and bearing such rate of interest as may be fixed by the Governor and Council of State: Provided, that no part of the payments of the principal or interest charges on said loan shall be made out of the general revenue of the State of North Carolina, and the credit of the State of North Carolina and the State Department of Agriculture or the agricultural fund, other than the revenue of the State fair funds, shall not be pledged either directly or indirectly for the payment of said principal or interest charges. The receipts, funds, and any other State fair assets may be pledged as security for the payment of any bonds that may be issued.

(b) Contracts and Leases; Pledge of Gate Receipts, etc. — For the further purpose of acquiring, constructing, operating and financing said properties and facilities on the North Carolina State fairgrounds, the Board of Agriculture may enter into such agreements, contracts and leases as may be necessary for the purpose of this section, and may pledge, appropriate, and pay such sums out of the gate receipts or other revenues coming to the State Board of Agriculture from the operation of any facilities of the State fair as may be required to secure, repay, or meet the principal and interest charges on the loan herein authorized.

(c) Gifts and Endowments. — The State Board of Agriculture may receive gifts and endowments, whether real estate, moneys, goods or chattels, given or bestowed upon or conveyed to them for the benefit of the State fair, and the same shall be administered in accordance with the requirements of the donors. (1945, c. 1009; 1959, c. 1186, s. 3.)

§ 106-504. Lands dedicated by State may be repossessed at will of General Assembly. — Any lands which may be dedicated and set apart under the provisions of this Article may be taken possession of and repossessed by the

State of North Carolina, at the will of the General Assembly. (1927, c. 209, s. 4(a).)

Part 2. County Societies.

§ 106-505. Incorporation; powers and term of existence. — Any number of resident persons, not less than 10, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, subject to any other applicable provisions of law, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, as may be needful to promote the objects of their association.

Whenever any such association is formed subsequent to April 1, 1949, a copy of the articles of incorporation shall be filed with the Secretary of State, together with any other information the Secretary of State may require. A fee of ten dollars ($10.00) shall be paid to the Secretary of State when such articles are filed. Upon receipt of such articles in proper form, and such other information as may be required, and the filing fee, the Secretary of State shall issue a charter of incorporation.

The corporate existence shall continue as long as there are 10 members, during the will and pleasure of the General Assembly. (1852, c. 2, ss. 1, 2, 3; R. C., c. 2, ss. 6, 7; Code, s. 2220; Rev., ss. 3868, 3869; C. S., s. 4941; 1949, c. 829, s. 2.)

§ 106-506. Organization; officers; new members. — Such society shall be organized by the appointment of a president, two vice-presidents, a secretary and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation. (1852, c. 2, s. 3; R. C., c. 2, s. 7; Code, s. 2221; Rev., s. 3869; C. S., s. 4942.)

§ 106-507. Exhibits exempt from State and county taxes. — Any society or association organized under the provisions of this Chapter, desiring to be exempted from the payment of State, county, and city license taxes on its exhibits, shows, attractions, and amusements, shall each year, not later than 60 days prior to the opening date of its fair, file an application with the Secretary of Revenue for a permit to operate without the payment of said tax; said application shall state the various types of exhibits and amusements for which the exemption is asked, and also the date and place they are to be exhibited. The Secretary of Revenue shall immediately refer said application to the Commissioner of Agriculture for approval or rejection. If the application is approved by said Commissioner of Agriculture, the Secretary of Revenue shall issue a permit to said society or association authorizing it to exhibit within its fairgrounds and during the period of its fair, without the payment of any State, county, or city license tax, all exhibits, shows, attractions, and amusements as were approved. Provided, however, that the Secretary of Revenue shall have the right to cancel said permit at any time upon the recommendation of said Commissioner of Agriculture. Any society or association failing to so obtain a permit from the Secretary of Revenue or having its permit canceled shall pay the same State, county, and city license taxes as may be fixed by law for all other persons or corporations exhibiting for profit within the State shows, carnivals, or other attractions. (1905, c. 513, s. 2; Rev., s. 3871; C. S., s. 4944; 1935, c. 371, s. 107; 1949, c. 829, s. 2; 1973, c. 476, s. 193.)

§ 106-508. Funds to be used in paying premiums. — All moneys so subscribed, as well as that received from the State treasury as herein provided, shall after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their bylaws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufacturers, mechanical implements, tools and productions as are of the growth and manufacture of the county or region, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county or region wherein such societies are respectively organized. (1852, c. 2, s. 7; R. C., c. 2, s. 9; Code, s. 2223; Rev., s. 3873; C. S., s. 4945; 1949, c. 829, s. 2.)

§ 106-509. Annual statements to State Treasurer. — Each agricultural society entitled to receive money from the State Treasurer shall, through its treasurer, transmit to the Treasurer of the State, in the month of December or before, a statement showing the money received from the State, the amount received from the members of the society for the preceding year, the expenditures of all such sums, and the number of the members of such society. (1852, c. 2, s. 8; R. C., c. 2, s. 10; Code, s. 2224; Rev., s. 3874; C. S., s. 4946.)

§ 106-510. Publication of statements required. — Each agricultural society receiving money from the State under this Chapter shall, in each year, publish at its own expense a full statement of its experiments and improvements, and reports of its committees, in at least one newspaper in the State; and evidence that the requirements of this Chapter have been complied with shall be furnished to the State Treasurer before he shall pay to such society the sum of fifty dollars ($50.00) for the benefit of such society for the next year. (1852, c. 2, s. 9; R. C., c. 2, s. 11; Code, s. 2225; Rev., s. 3875; C. S., s. 4947.)

§ 106-511. Records to be kept; may be read in evidence. — The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation may be a party. (1852, c. 2, s. 5; R. C., c. 2, s. 12; Code, s. 2226; Rev., s. 3876; C. S., s. 4948.)

Part 3. Protection and Regulation of Fairs.

§ 106-512. Lien against licensees' property to secure charge. — All agricultural fairs which shall grant any privilege, license, or concession to any person, persons, firm, or corporation for vending wares or merchandise within any fairgrounds, or which shall rent any ground space for carrying on any kind of business in such fairgrounds, either upon stipulated price or for a certain percent of the receipts taken in by such person, persons, firm, or corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property of such person, persons, firm, or corporation until all charges for privileges, licenses, or concessions are paid, or until their contract is fully complied with. (1915, c. 242, s. 1; C. S., s. 4950.)

§ 106-513. Notice of sale to owner. — Written notice of such sale shall be served on the owner of such goods, wares, merchandise, or fixtures or other property 10 days before such sale, if he or it be a resident of the State, but if a nonresident of the State, or his or its residence be unknown, the publication of such notice for 10 days at the courthouse door and three other public places in the county shall be sufficient service of the same. (1915, c. 242, s. 2; C. S., s. 4951.)

§ 106-514. Unlawful entry on grounds a misdemeanor. — If any person, after having been expelled from the fairgrounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over [open] the enclosing structure of said fairgrounds and enter the same, or shall enter the enclosure of said fairgrounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1870-1, c. 184, s. 3; Code, s. 2795; 1901, c. 291; Rev., s. 3669; C. S., s. 4952.)

§ 106-515. Assisting unlawful entry on grounds a misdemeanor. — It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or a pass or in any other way. Any violation of this section shall be a misdemeanor and punishable by a fine not exceeding twenty dollars ($20.00) or imprisonment not exceeding 10 days. (1915, c. 242, ss. 3, 4; C. S., s. 4953.)

§ 106-516. Vendors and exhibitors near fairs to pay license. — Every person, firm, officer, or agent of any corporation who shall temporarily expose for sale any goods, wares, foods, soft drinks, ice cream, fruits, novelties, or any other kind of merchandise, or who shall operate any merry-go-round, Ferris wheel, or any other device for public amusement, within one fourth of a mile of any agricultural fair during such fair, shall pay a tax of one hundred dollars ($100.00) in each county in which he shall carry on such business, whether as a principal or agent: Provided, this section shall not apply to any business established 60 days prior to the beginning of such fair. (1915, c. 242, s. 5; C. S., s. 4954.)

§ 106-516.1. Carnivals and similar amusements not to operate without permit. — Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding devices, circus and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than 30 days prior to a regularly advertised agricultural fair and so in conflict with G.S. 105-39. Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a misdemeanor and be punished by a fine or imprisonment, or both, in the discretion of the court: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis from holding fairs or tobacco festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events. (1953, c. 854; 1963, c. 1127.)

Local Modification. — Franklin: 1953, c. 854; Greene: 1957, c. 738.

§ 106-517. Application for license to county commissioners. — Every such person mentioned in G.S. 106-516 shall apply in advance for a license to the board

of county commissioners of the county in which he proposes to peddle, sell, or operate, and the board of county commissioners may in their discretion issue license upon the payment of the tax to the sheriff, which shall expire at the end of 12 months from its date. (1915, c. 242, s. 6; C. S., s. 4955.)

§ 106-518. Unlicensed vending, etc., near fairs a misdemeanor. — Any person violating the provisions of G.S. 106-516 and 106-517 shall be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days, at the discretion of the court. (1915, c. 242, s. 7; C. S., s. 4956.)

§ 106-519. Commissioners may refuse to license shows within five miles. — The county commissioners of any county in North Carolina in which there is a regularly organized agricultural fair may refuse to allow any circus, menagerie, wild West show, dog and pony show, or carnival show, to exhibit within five miles of such fair from its beginning to its ending: Provided, that notice is given the sheriff by the commissioners of said county not to issue such license to said entertainments 60 days prior to the date of such exhibition. (1913, c. 163, s. 1; C. S., s. 4957.)

§ 106-520. Local aid to agricultural, animal, and poultry exhibits. — Any city, town, or county may appropriate not to exceed one hundred dollars ($100.00) to aid any agricultural, animal, or poultry exhibition held within such city, town, or county. (1919, c. 135; C. S., s. 4958.)

Local Modification. — Craven: 1955, c. 607, amended by 1957, c. 886; Edgecombe and Nash: 1953, c. 273; city of New Bern: 1955, c. 1125; city of Rocky Mount: 1953, c. 273.

Part 4. Supervision of Fairs.

§ 106-520.1. Definition. — As used in this Article, the word "fair" means a bona fide exhibition designed, arranged and operated to promote, encourage and improve agriculture, horticulture, livestock, poultry, dairy products, mechanical fabrics, domestic economy, and 4-H Club and Future Farmers of America activities, by offering premiums and awards for the best exhibits thereof or with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.2. Use of "fair" in name of exhibition. — It shall be unlawful for any person, firm, corporation, association, club, or other group of persons to use the word "fair" in connection with any exhibition, circus, show, or other variety of exhibition unless such exhibition is a fair within the meaning of G.S. 106-520.1. (1949, c. 829, s. 1.)

§ 106-520.3. Commissioner of Agriculture to regulate. — The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, is hereby authorized, empowered and directed to make rules and regulations with respect to classification, operation and licensing of fairs, so as to insure that such fairs shall conform to the definition set out in G.S. 106-520.1, and shall best promote the purposes of fairs as set out in such definition. Every fair, and every exhibition using the word "fair" in its name, except fairs classified by the Commissioner of Agriculture as noncommercial community fairs, must comply with the standards, rules and regulations set up and promulgated by the Commissioner of Agriculture, and must secure a license from the Commissioner of Agriculture before such exhibition or fair is staged or operated. No license shall be issued for any such exhibition or fair unless it meets the standards and complies with the rules and regulations of the Commissioner of Agriculture with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.4. Local supervision of fairs. — No county or regional fairs shall be licensed to be held unless such fair is operated under supervision of a local board of directors who shall employ appropriate managers, who shall be responsible for the conduct of such fair, and otherwise comply with the standards, rules and regulations promulgated by the Commissioner of Agriculture. The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, shall make rules and regulations requiring county and regional fairs to emphasize agricultural, educational, home and industrial exhibits by providing adequate premiums. (1949, c. 829, s. 1.)

§ 106-520.5. Reports. — Every fair shall make such reports to the Commissioner of Agriculture, as said Commissioner may require. (1949, c. 829, s. 1.)

§ 106-520.6. Premiums and premium lists supplemented. — The State Board of Agriculture may supplement premiums and premium lists for county and regional fairs and the North Carolina State Fair, and improve and expand the facilities for exhibits at the North Carolina State Fair, at any time or times, out of any funds which may be available for such purposes. (1949, c. 829, s. 1.)

§ 106-520.7. Violations made misdemeanor. — Any person who violates any provision of G.S. 106-520.1 through G.S. 106-520.6 is guilty of a misdemeanor punishable by a fine or imprisonment in the discretion of the court. (1949, c. 829, s. 1.)

ARTICLE 46.

Erosion Equipment.

§ 106-521. Counties authorized to provide farmers with erosion equipment. — The county commissioners in the several counties of the State are hereby authorized and empowered to purchase the necessary equipment to be used as provided in this Article by farmers in the cultivation of their lands in such manner as may best tend to prevent erosion; and they are authorized to put such equipment as they deem necessary for the purpose in the hands of farmers who may apply for the same, either by way of resale to the said farmers, or upon a rental basis, or by guarantee, as may in their judgment be deemed best, of the purchase price of the said equipment directly sold to the said farmers. (1935, c. 172, s. 1.)

Local Modification. — Granville: 1953, c. 1240.

§ 106-522. Application for assistance. — Any person or persons, corporation or concern, engaged in the cultivation of a farm or farms in this State may apply to the county commissioners for assistance under this Article, stating in the said application as nearly as may be the size or area of the cultivated lands, its condition, the kind of soil, the amount of erosion, if any, the topography of the farm, its present manner of drainage and the kinds of crops usually cultivated thereon. It shall also state what means have been used heretofore, if any, to prevent soil erosion, and specifically the extent to which erosion now exists upon the premises. At any time subsequent to the said application, if relief is extended to him, he shall, when so requested by the said county commissioners or any other person delegated by them to receive the information, make detailed reports as to the condition of his said cultivated lands, the extent to which provision has been made thereon to prevent soil erosion, with the results of same. There shall also be stated in the said application the kind and quantity of equipment which,

in the judgment of the applicant, is necessary for use upon his farm. (1935, c. 172, s. 2.)

§ 106-523. Investigation and extending relief. — Upon the filing of such application the county commissioners shall cause due investigation to be made with reference thereto, and for their guidance; shall fully consider the same and if, in their opinion, the relief asked for should be extended, they shall thereupon proceed to supply or have supplied such equipment as in their judgment may be necessary under the circumstances, as provided in this Article. (1935, c. 172, s. 3.)

§ 106-524. Purchase of equipment and furnishing to farmers; notes and security from applicants; rental contracts; guarantee of payment. — The county commissioners are authorized and empowered to purchase the equipment by them deemed to be necessary and supply the applicant therewith, upon such terms and conditions of purchase, rental or repayment as may be deemed by them just and proper, and which will save the county from loss in the matter. To that end, they are authorized to accept from the applicant such notes and security, if any by them are deemed necessary, or shall make with them such rental contracts as may be reasonably prudent and safe in the premises. They are further authorized and empowered, when in their judgment it may be deemed advisable, to guarantee the payment to the seller, for such equipment as may be directly purchased by the applicant for the use aforesaid: Provided, however, that the purchase of the said equipment has been previously approved by the county commissioners. (1935, c. 172, s. 4.)

§ 106-525. Guarantee of payment where equipment purchased by federal agencies. — Where the said equipment may be purchased by any federal agency and by it furnished to any person, persons, firm or corporation engaged in the actual cultivation of the soil, the county commissioners are authorized, under such terms and conditions as to them may seem advisable, and as shall conserve the public interest and be just and proper to the county, to guarantee the payment of the purchase price of such equipment in full or the interest upon the obligations made in their purchase, and may do so in full or in part. (1935, c. 172, s. 5.)

§ 106-526. Expense of counties extending relief made lien on premises of applicant. — In the event the county commissioners shall extend any relief under this Article, to the extent of the money furnished or the obligation of the county with respect thereto, the same shall be a lien upon the premises, lands and tenements of the owner and applicant for such relief, securing the repayment of the funds furnished by the county and securing the county against any loss by reason of its obligation in any respect, the said lien to be foreclosed in all respects as provided in the law for deeds of trust or real estate mortgages: Provided, however, that in case the county itself has entered into an obligation in order to extend to any persons herein named the relief provided in this Article, the county shall not be postponed in its relief until loss is actually incurred by it, but may proceed in accordance with the contract and agreement made with the applicant for relief, and when the obligations of the county in any respect are due: Provided, further, that the lien created by this section shall not be effective as against innocent purchasers for value unless and until notice of such lien shall be docketed in the office of the clerk of the superior court of the county in which the land lies in the manner and form provided by law for perfecting laborer's or mechanic's liens against real property. (1935, c. 172, s. 6.)

§ 106-527. Counties excepted. — This Article shall not apply to the Counties of Alexander, Alleghany, Ashe, Avery, Bladen, Buncombe, Camden, Columbus, Cumberland, Davie, Gates, Haywood, Hyde, Jackson, Lincoln, Macon, Madison,

Moore, New Hanover, Pamlico, Pasquotank, Rutherford, Sampson, Transylvania, Washington, Watauga, Wilkes, and Yadkin. (1935, c. 172, s. 7; 1937, c. 25.)

ARTICLE 47.

State Marketing Authority.

§ 106-528. State policy and purpose of Article. — It is declared to be the policy of the State of North Carolina and the purpose of this Article to promote, encourage and develop the orderly and efficient marketing of products of the home, farm, sea and forest; to establish, maintain, supervise and control, with the cooperation of counties, cities and towns, centrally located markets for the sale and distribution of such products, so as to promote a steady flow of commodities, properly graded and labeled, into the channels of trade at the time and place to enable the producer to get the market price and the consumer to get a product in keeping with the price paid. (1941, c. 39, s. 1.)

§ 106-529. State Marketing Authority created; members and officers; commodity advisers; meetings and expenses. — To secure these aims, there is hereby created an incorporated public agency of the State, to be known as the State Marketing Authority, hereinafter referred to as the "Authority." It shall consist of the members of the State Board of Agriculture, and the Commissioner of Agriculture shall be the chairman. They shall perform the duties and exercise the powers herein set out as a part of their official duties as members of the Board of Agriculture. The Governor shall appoint from time to time commodity advisers to plan with the Authority the programs undertaken in their respective communities. The Authority shall elect and prescribe the duties of a secretary-treasurer, who shall not be a member of the Authority. He shall give bond in such amount as the Authority shall determine in some reliable surety company doing business in North Carolina, and the Authority shall pay the premiums. The Authority shall meet in regular session annually at a fixed place and date, and shall meet in special session at such other times and places as the chairman may request. The members shall receive no salary, but shall receive actual expenses plus seven dollars ($7.00) per day for actual time spent in performing their duties. (1941, c. 39, s. 2.)

§ 106-530. Powers of Authority. — The Authority shall have the following powers:

(1) To sue and be sued in its corporate name in any court or before any administrative agency of the State or of the United States, and to enter into agreements with the United States Department of Agriculture or any other legally constituted State or federal agency, or with any county, city or town in the furtherance of the purposes of this Article.

(2) To plan, build, construct, or cause to be built or constructed, or to purchase, lease or acquire the use of any warehouses or other facilities that may be necessary for the successful operation by the Authority of wholesale markets for products of the home, farm, sea and forest at chosen points in North Carolina. The Authority may make such contracts as may be needed for these purposes. In no case shall the Authority be responsible for any rent except from the income of the market in excess of other operating expenses. The Authority may select and employ for each market capable managers, who shall be familiar with the problems of the grower and the distributor, and of the marketing of farm products, and who shall have the business ability and training to operate a market and to plan for its proper development and growth in order best to serve the interests of producers,

distributors, consumers in the area, and the general public. The managers may employ assistants and agents with the approval of the Authority. The Authority may make such regulations as will promote the policy of this Article, as to the manner in which the markets shall be operated, the business conducted, and stalls sublet to dealers.

(3) To fix the terms upon which individual, cooperative or corporate wholesale merchants, warehouses or warehousemen may place their facilities or services under the supervision and regulation of the Authority. The Authority may extend to any such wholesale merchants, warehouses or warehousemen marketing benefits in the form of inspection, market informational and news service and may make regulations as to the operation of such facilities or services and as to forms, reports, handling, grades, weights, packages, labels, and other standards for the products handled by such merchants, warehouses or warehousemen.

(4) To fix rentals and charges for each type of service or facility in the markets under its control, taking into consideration the cost of such facility or service, the interest and amortization period required, a proper relationship between types of operators in the market, cost of operation, and the need for reasonable reserves for repairs, depreciation, expansion, and similar items. These rentals and charges shall not bring any profit to any agency over and above the costs of operation, necessary reserves, and debt service.

(5) To issue permits to itinerant dealers in intrastate commerce, who express a willingness to come under the program of the State Marketing Authority. Such permits shall enable the holders to solicit orders and to buy and sell produce under the rules and regulations of the Authority and in conformance with G.S. 106-185 to 106-196 and not inconsistent with the United States Perishable Agricultural Commodities Act, 1930 (46 Stat. 531).

(6) To issue bonds and other securities to obtain funds to acquire, construct, and equip warehouses to be used in carrying out the purposes of this Article. The bonds shall be entitled "North Carolina Marketing Authority Bonds" and shall be issued in such form and denominations and shall mature at such time or times, not exceeding 30 years after their date, and shall bear such interest, not exceeding five percent (5%) per annum, payable either annually or semiannually, as the Authority shall determine. They shall be signed by the chairman of the Authority, and the corporate seal affixed or impressed upon each bond and attested by the secretary-treasurer of the Authority. The coupons shall bear the facsimile signature of the chairman officiating when the bonds are issued. Any issue of these bonds and notes may be sold publicly, or at private sale for not less than par to the Reconstruction Finance Corporation or other State or federal agency or may be given in exchange to any county, city, town or individual for the lease or purchase of property to be used by the Authority. To secure such indebtedness, the Authority may give mortgages or deeds of trust, executed in the same manner as the bonds, on the property purchased or acquired, and may pledge the revenues from the markets in excess of operating expenses, interest and insurance: Provided, that each market shall be operated on a separate financial basis, and only such revenues and properties of each separate market shall be liable for the obligations of that market. No obligations incurred by the Authority shall be obligations of the State of North Carolina or any of its political subdivisions, or a burden on the taxpayers of the State or any political subdivision. This does not prevent the State or any of its agencies,

departments or institutions, or any private or public agency from making a contribution to the Authority, in money or services or otherwise.

Bonds and notes issued under this Article shall be exempt from all State, county or municipal taxes or assessments of any kind; the interest shall not be taxable as income, nor shall the notes, bonds, nor coupons be taxable as part of the surplus of any bank, trust company or other corporation.

Any resolution or resolutions authorizing any bonds shall contain provisions which shall be a part of the contract with the holders of the bonds, as to:

a. Pledging the fees, rentals, charges, dues, tolls, and inspection and sales fees, and other revenues to secure payment of the bonds;
b. The rates of the fees or tolls to be charged for the use of the facilities of the warehouse or warehouses, and the use and disposition of the revenues from its operation;
c. The setting aside of reserves or working funds, and the regulation and disposition thereof;
d. Limitations on the purposes to which the proceeds of sale of any issue of bonds may be applied;
e. Limitations on the issuance of additional bonds; and
f. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(7) To accept grants in aid or free work.
(8) To adopt, use and alter a corporate seal.
(9) To dispossess tenants for nonpayment of rent and for failure to abide by the regulations of the Authority.
(10) To hire necessary agents, engineers, and attorneys, and to do all things necessary to carry out the powers granted by this Article. (1941, c. 39, s. 3.)

§ 106-531. Discrimination prohibited; restriction on use of funds. — The Authority shall not permit:

(1) Any discrimination against the sale, on any of the markets under their control, of any farm product because of type of operator or area of production.
(2) The use of any of its funds for any purpose other than for the support, necessary expansion, and operation of this State marketing system, or the use of any of its funds to establish any retail market or to build or furnish more than one market in any town. (1941, c. 39, s. 4.)

§ 106-532. Fiscal year; annual report to Governor. — The Authority shall operate on a fiscal year, which shall be from July first to June thirtieth. The Commissioner of Agriculture shall file an annual report with the Governor containing a statement of receipts and disbursements and the purposes of such disbursements, and a complete statement of the financial condition of the Authority, and an account of its activities for the year. (1941, c. 39, s. 5.)

§ 106-533. Application of revenues from operation of warehouses. — All rentals and charges, fees, tolls, storage and sales commissions and revenues of any sort from operation of each warehouse shall be applied to the payment of the cost of operating and administering the warehouse and market facilities including interest on bonds and other evidences of indebtedness issued therefor, and the cost of insurance against loss by injury to persons or property, and the balance shall be paid to the secretary-treasurer of the Authority and be used to provide a sinking fund to pay at or before maturity all bonds and notes and

other evidences of indebtedness incurred for and on behalf of the building, constructing, maintaining and operating of each warehouse. A separate sinking fund account shall be kept for each market, and no market shall be liable for the obligations of any other market. (1941, c. 39, s. 6.)

§ 106-534. Exemption from taxes and assessments. — The Authority shall be regarded as performing an essential governmental function in constructing, operating or maintaining these markets, and shall be required to pay no taxes or assessments on any property acquired or used by it for the purposes herein set out. (1941, c. 39, s. 7.)

ARTICLE 48.

Relief of Potato Farmers.

§ 106-535. Guaranty of minimum price to growers of Irish potatoes under share planting system. — From and after March 15, 1941, every person, firm, association or corporation engaged in the practice of supplying growers of Irish potatoes in this State with seed potatoes and fertilizer and other supplies for the purpose of growing a crop of Irish potatoes under the system commonly known as the share planting system and who enter into a contract with such grower and/or growers on or before planting them to furnish such grower with seed potatoes, fertilizer or other necessary supplies, or to perform services in connection with the gathering of such crop and marketing the same, shall at the time of entering into such contract, agree in writing, with such grower that he or it will guarantee that the grower shall receive at the time such potatoes are marketed an amount of not less than ten dollars ($10.00) for each bag of seed potatoes planted by the grower or growers from such person, firm, association or corporation who, under the agreement, furnished such seed potatoes and other supplies to the grower or growers thereof. (1941, c. 354, s. 1.)

Local Modification. — Bladen, Durham, Greene, Lenoir, Pender, Randolph, Rockingham, Sampson and Union: 1941, c. 354, s. 5.

§ 106-536. Additional net profits due grower not affected. — The minimum amount to be paid the grower by those furnishing said supplies under the terms of this Article shall in nowise affect any additional net profit due the grower, should any such additional profits be shown. (1941, c. 354, s. 2.)

§ 106-537. Minimum payments only compensation for labor and use of equipment, land, etc. — The payment of the stipulated ten dollars ($10.00) per bag of said seed potatoes furnished said grower or growers by any firm, person, association or corporation shall be compensation only for labor and work done and for the use of any animal or machine and equipment used or furnished by said grower or growers, and also use of land in growing said potato crop, and this amount shall be paid to said grower from returns from said crops so produced; and the said ten dollars ($10.00) shall not be computed as any part of any other expenses furnished by said person, firm, association or corporation furnishing other materials or supplies for the purpose of said share planting. (1941, c. 354, s. 3.)

§ 106-538. Time of payments; Article not applicable to landlord-tenant contracts. — The said sum of ten dollars ($10.00) per bag of seed potatoes shall be paid to said grower or growers by said firm, person, association or corporation as herein provided, for share planting of potatoes, not later than 30 days after the delivery of last potatoes grown under the share planting contract existing

between said grower or growers and the said person, firm, association or corporation: Provided, that nothing in this Article shall apply to contracts entered into between landowners and their respective tenants. (1941, c. 354, s. 4.)

ARTICLE 49.

Poultry; Hatcheries; Chick Dealers.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-539. National poultry and turkey improvement plans. — In order to promote the poultry industry of the State, the North Carolina Department of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the operation of the national poultry and turkey improvement plans. (1945, c. 616, s. 1; 1969, c. 464.)

§ 106-540. Rules and regulations. — After public hearing following 30 days' public notice, the North Carolina Board of Agriculture is hereby authorized to make such regulations as may be necessary to accomplish the following:

(1) Carry out the provisions of the national poultry and turkey improvement plans.
(2) Set up minimum standards for the operation of hatcheries.
(3) Regulate hatching egg dealers, chick dealers, poult dealers, and jobbers.
(4) Regulate the shipping into this State of baby chicks, turkey poults and hatching eggs.
(5) Facilitate the control and eradication of contagious and infectious diseases of poultry. (1945, c. 616, s. 2; 1969, c. 464.)

§ 106-541. Definitions. — For the purpose of this Article, a hatchery shall be defined as any establishment that operates hatchery equipment for the production of baby chicks or poults. A hatching egg dealer, chick dealer or jobber shall mean any person, firm or corporation that buys hatching eggs, baby chicks or turkey poults and sells or offers them for sale. The term "mixed chicks" or "assorted chicks" shall mean chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of a distinct breed. (1945, c. 616, s. 3; 1969, c. 464.)

§ 106-542. Hatcheries, chick dealers and others to obtain permit to operate. — No person, firm or corporation shall operate a hatchery and no chick or hatching egg dealer or jobber shall operate within this State without first obtaining a permit from the Department of Agriculture to so operate. Said permit may be cancelled by the Department of Agriculture for violation of this Article or the regulations promulgated thereunder by the Board of Agriculture. Any person who is refused a permit or whose permit is revoked may appeal within 30 days of such refusal or revocation to the superior court of the county wherein the hatchery is or is sought to be located. (1945, c. 616, s. 4; 1969, c. 464.)

§ 106-543. Requirements of national poultry and turkey improvement plans must be met. — All baby chicks, turkey poults and hatching eggs

produced, sold or offered for sale shall originate in flocks that meet the requirements of the national poultry and turkey improvement plans as administered by the North Carolina Department of Agriculture and the regulations issued by authority of this Article for the control of pullorum disease and other infectious diseases provided that nothing in this Article shall require any hatchery to adopt the national poultry improvement plan or national turkey improvement plan. (1945, c. 616, s. 5; 1969, c. 464.)

§ 106-544. Shipments from out of State. — All baby chicks, turkey poults and hatching eggs shipped or otherwise brought into this State shall originate in flocks that meet the minimum requirements of pullorum and typhoid disease control provided for in this Article and the regulations issued by authority of this Article, and shall be accompanied by a certificate approved by the official state agency or the livestock sanitary officials of the state of origin certifying same. (1945, c. 616, s. 6; 1969, c. 464.)

§ 106-545. False advertising. — No hatchery, hatchery dealer, chick dealer or jobber shall use false or misleading advertising in the sale of their products. (1945, c. 616, s. 7; 1969, c. 464.)

§ 106-546. Notice describing grade of chicks to be posted. — All hatcheries, chick dealers or jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the North Carolina Department of Agriculture describing the grade of chicks approved by the North Carolina Department of Agriculture. (1945, c. 616, s. 8; 1969, c. 464.)

§ 106-547. Records to be kept. — Every hatchery, hatching egg dealer, chick dealer or jobber shall keep such records of operation as the regulations of the Department of Agriculture may require for the proper inspection of said hatchery, dealer or jobber. (1945, c. 616, s. 9; 1969, c. 464.)

§ 106-548. Fees; quarantine; compulsory testing. — For the purpose of carrying out the provisions of this Article and the regulations issued thereunder, the Department of Agriculture is authorized to collect annually from every hatchery a fee not to exceed ten dollars ($10.00) where the egg capacity is not more than 50,000 eggs and twenty dollars ($20.00) where the egg capacity is 50,000 to 100,000 eggs, and thirty dollars ($30.00) where the egg capacity is over 100,000, provided the fee for hatcheries with egg capacity not exceeding 1,000 eggs may be waived at the discretion of the Commissioner of Agriculture. Chick dealers and jobbers shall pay a fee of three dollars ($3.00) annually, said fees to be used for the enforcement of this Article. The North Carolina Board of Agriculture is authorized to establish fee schedules not in excess of the actual cost thereof for pullorum and other disease testing, and the performance of services such as culling and selecting by Department personnel. When the State Veterinarian receives information or has reason to believe that pullorum disease or fowl typhoid exists in any poultry or that they have been exposed to one of these diseases, he shall promptly cause said poultry to be quarantined on the premises where located. Said poultry or hatching eggs shall not be removed from the premises where quarantined until quarantine has been released by the State Veterinarian or his authorized representative. A permit to move such infected or exposed poultry to immediate slaughter, or to another premise under quarantine, may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make regulations under which compulsory testing of poultry for pullorum disease or fowl typhoid may be required. (1945, c. 616, s. 10; 1969, c. 464.)

§ 106-549. Violation a misdemeanor. — Any person, firm or corporation who shall willfully violate any provision of this Article or any rule or regulation duly established by authority of this Article, shall be guilty of a misdemeanor and

shall be fined not in excess of five hundred dollars ($500.00) or imprisoned not in excess of six months, or both fined and imprisoned, in the discretion of the court. (1945, c. 616, s. 11; 1969, c. 464.)

ARTICLE 49A.

Voluntary Inspection of Poultry.

§ 106-549.1. Short title. — This Article shall be known as the "North Carolina Voluntary Inspection of Poultry Law." (1955, c. 1233, s. 1.)

§ 106-549.2. Definitions. — The following words, terms, and phrases shall be construed for the purpose of this Article as follows:

(1) "Commissioner" means Commissioner of Agriculture of North Carolina.
(2) "Condition and wholesomeness" means the condition of any product and its healthfulness and fitness for human food.
(3) "Identify" means to apply official identification to products or the container thereof.
(4) "Inspector" means any person who is licensed or designated by the State Supervisor of Poultry Inspection to inspect and certify the condition and wholesomeness of poultry products in accordance with the provisions of this Article or the rules and regulations made pursuant thereto.
(5) "Official identification" means the symbol represented by a stamp, label, seal, or other device approved by the Commissioner and affixed to any product, or to any container thereto, stating that the product was inspected or graded or both.
(6) "Official plant" means one or more buildings, or parts thereof, comprising a single plant in which the facilities and methods of operation therein have been approved by the Commissioner as suitable and adequate for processing poultry in accordance with the rules and regulations of the Board.
(7) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.
(8) "Poultry" means any kind of domesticated bird, including, but not being limited to chickens, turkeys, ducks, pigeons, geese, and guineas.
(9) "Poultry products" means any giblets or any edible part of dressed poultry other than eviscerated poultry or any article of food for human consumption which is prepared in part from any edible portion of dressed poultry or from any product derived wholly from such edible portion.
(10) "Ready-to-cook poultry" means any dressed poultry from which the protruding pinfeathers, vestigial feathers (hair or down as the case may be), head, shanks, crop, oil gland, trachea, esophagus, entrails, reproductive organs and lungs have been removed, and with or without the giblets, is ready to cook without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry. (1955, c. 1233, s. 2.)

§ 106-549.3. Authority to enter into voluntary agreements providing for inspection. — The Commissioner of Agriculture is hereby granted permission to enter into voluntary agreements with individuals, firms, or corporations operating poultry processing plants in this State in which dressed poultry is processed, cut up, or otherwise handled, for the purpose of establishing official inspection for ready-to-cook poultry and poultry products for condition and wholesomeness. The Commissioner is authorized to cooperate with other branches of the government of the State of North Carolina, or the Secretary

of Agriculture of the United States, if in his judgment such an agreement and arrangement for providing inspection service will meet the requirements of the North Carolina poultry industry. (1955, c. 1233, s. 3.)

§ 106-549.4. Rules and regulations. — The Board of Agriculture is authorized to promulgate and adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this Article. These rules and regulations shall include minimum requirements for plant facilities; processing methods and techniques; methods of determining the condition and wholesomeness of poultry, poultry products, or any edible parts thereof; and other administrative factors that may arise in administering this Article. (1955, c. 1233, s. 4.)

§ 106-549.5. Who shall be eligible for this service. — Any person operating a processing plant in North Carolina in accordance with the provisions of this Article and the rules and regulations duly adopted by the Board of Agriculture shall be eligible for this service. (1955, c. 1233, s. 5.)

§ 106-549.6. Cost of inspection. — The cost of this inspection service shall be borne by the person receiving this service. This cost shall include the salary or salaries of the inspector or inspectors assigned to the plant for the purpose of inspecting poultry and poultry products processed or otherwise handled therein. In addition, a reasonable administrative charge may be added to the cost of this service. (1955, c. 1233, s. 6.)

§ 106-549.7. Payment of inspection costs. — The payment of inspection costs and other costs as provided in this Article shall be paid to the North Carolina Department of Agriculture. (1955, c. 1233, s. 7.)

§ 106-549.8. Plant number. — Upon receiving an application from any person, and after it is determined that the plant, plant facilities, operating procedures and techniques in the plant in which inspection service is requested meet the provisions of this Article and the rules and regulations duly adopted by the Board of Agriculture, the Commissioner shall issue the applicant an official plant number for the particular plant or facility in which the service is requested. (1955, c. 1233, s. 8.)

§ 106-549.9. Identifying officially inspected poultry, poultry products, and edible parts thereof. — The Commissioner is hereby granted authority to issue, approve, or otherwise give permission for poultry, poultry products, and other edible parts to be officially identified with a stamp, label, or other device for all or part of any poultry processed in official plants. This identification shall include, but not be limited to, the official plant number. (1955, c. 1233, s. 9.)

§ 106-549.10. Inspection in official plants. — All dressed poultry that is eviscerated in an official plant where inspection service is maintained shall be processed in a sanitary manner. Dressed poultry may be eviscerated in such plants without inspections for condition and wholesomeness but uninspected and inspected operations may not be carried on simultaneously except in plants where processing rooms (including packing rooms) are separate or when by other acceptable means effective segregation of inspection [inspected] and uninspected product[s] is maintained. (1955, c. 1233, s. 10.)

§ 106-549.11. Supervision of inspection program. — The supervision of this inspection program shall be under the State Veterinarian or person designated by the Commissioner or under the State Veterinarian or the person designated by the Commissioner in cooperation with the supervisor of the inspection program of the United States Department of Agriculture in the event a cooperative arrangement is carried on between the North Carolina Department

of Agriculture and the United States Department of Agriculture. (1955, c. 1233, s. 11.)

§ 106-549.12. Who shall inspect poultry. — The State Veterinarian or person designated by the Commissioner shall have the authority to license, designate, or otherwise determine qualified personnel who may inspect poultry as provided in this Article. These inspectors so designated shall have supervision over plant sanitation, inspection of poultry, and carrying out the rules and regulations adopted by the Board of Agriculture. (1955, c. 1233, s. 12.)

§ 106-549.13. Withdrawal of service. — In the event any person having official inspection service in his plant, or plants, shall fail to abide by the provisions of this Article or the rules and regulations adopted by the Board of Agriculture or to terms in the agreement with the North Carolina Department of Agriculture providing for inspection service, the Commissioner shall have the right to withdraw this service. The Commissioner shall also have the authority to reinstate the service after compliance with the rules and regulations have been met. The agreement may also be terminated by the applicant by giving the Commissioner a 30-day notice. (1955, c. 1233, s. 13.)

§ 106-549.14. Exemptions. — The provisions of this Article shall not apply to any individual raising and processing poultry, ready-to-cook poultry or poultry products without the consent of such individual. (1955, c. 1233, s. 13½.)

ARTICLE 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

§ 106-549.15. Definitions. — As used in this Article, except as otherwise specified, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

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 article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b. 1. If it bears or contains (by reason of administration of any substance to the live animal or otherwise) 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 may, in the judgment of the Commissioner, make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not adulterated under clause 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive or color additive in or on such article is prohibited by

order of the Commissioner in establishments at which inspection is maintained under this Article;

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it 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;

e. If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

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 section 409 of the Federal Food, Drug, and Cosmetic Act;

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or 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; or

i. If it is margarine containing animal fat and any of the raw material used therein consist in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.

(3) "Authorized representative" means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture.

(4) "Board" means the North Carolina Board of Agriculture.

(5) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.

(7) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.

(8) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).

(9) "Firm" means any partnership, association, or other unincorporated business organization.

(10) "Intrastate commerce" means commerce within this State.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(12) "Labeling" means all labels and other written, printed, or graphic matter (i) upon any article or any of its containers or wrappers, or (ii) accompanying such article.

(13) "Meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(14) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats.

(15) "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If its labeling is false or misleading in any particular;

b. If it is offered for sale under the name of another food;

c. If it is imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

d. If its container is so made, formed, or filled as to be misleading;

e. If in a package or other container unless it bears a label showing (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (ii) of this paragraph e, reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Board;

f. If any word, statement, or other information required by or under authority of this or the subsequent Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.21 unless (i) it conforms to such definition and standard, and (ii) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.21, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of paragraph g, unless its label bears (i) the common or usual name of the food, if any there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (ii) of this paragraph i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this paragraph k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

l. If it fails to bear, directly thereon or on its container, as the Board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(16) "Official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this or the subsequent Article.

(17) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(18) "Official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this or the subsequent Article.

(19) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or animal under this or the subsequent Article.

(20) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(21) "Prepared" means slaughtered, canned, salted, smoked, rendered, boned, cut up, or otherwise manufactured or processed.

(22) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines, except rendering conducted under inspection under this Article. (1969, c. 893, s. 1.)

§ 106-549.16. Statement of purpose. — Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly

labeled and packaged meat and meat food products, and results in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by North Carolina and the United States as contemplated by this and the subsequent Article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this and the subsequent Article. (1969, c. 893, s. 2; 1971, c. 54, s. 3.)

§ 106-549.17. Inspection before slaughter. — For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for. (1969, c. 893, s. 3.)

§ 106-549.18. Inspection; stamping carcass. — For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tax as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to [do] so destroy and such condemned carcass or part thereof. (1969, c. 893, s. 4.)

Editor's Note. — The word "do," which is enclosed in brackets in the section as set out above, appears in the 1969 act, but would seem to be superfluous.

§ 106-549.19. Application of Article; place of inspection. — The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article. (1969, c. 893, s. 5.)

§ 106-549.20. Inspectors' access to businesses. — For the purposes hereinbefore set forth the Commissioner or his authorized representative shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such articles are prepared for intrastate commerce and for the purposes of any examination and inspection said inspectors shall have access at all times during regular business hours to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "North Carolina Department of Agriculture Inspected and Passed" all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as "North Carolina Department of Agriculture Inspected and Condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to so destroy such condemned meat food products. (1969, c. 893, s. 6.)

§ 106-549.21. Stamping container or covering; regulation of container. — (a) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "North Carolina Department of Agriculture Inspected and Passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Article is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "North Carolina Department of Agriculture Inspected and Passed" under the provisions of this Article, and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Article is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this Article and found to be not adulterated shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Commissioner or

authorized representative may require, the information required under subdivision (15) of G.S. 106-549.15.

(c) The Board whenever it determines such action is necessary for the protection of the public, may prescribe:

(1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to this and the subsequent Article;

(2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading, and which are approved by the Commissioner or his authorized representative, are permitted.

(e) If the Commissioner or his authorized representative has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this title is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner or his authorized representative, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. Any such determination by the Commissioner shall be conclusive unless, within 30 days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the Superior Court of Wake County. Such appeal shall be under the provision of Chapter 150A of the General Statutes. (1969, c. 893, s. 7; 1973, c. 1331, s. 3.)

§ 106-549.22. Rules and regulations of Board. — The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "North Carolina Department of Agriculture Inspected and Passed." (1969, c. 893, s. 8.)

Cross Reference. — As to agreements between county or district health departments and the Commissioner of Agriculture concerning inspection of establishments listed in this section, see § 130-17.1.

§ 106-549.23. Prohibited slaughter, sale, and transportation. — No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals —

(1) Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles for intrastate commerce, except in compliance with the requirements of this and the subsequent Article.

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

a. Any such articles which (i) are capable of use as human food, and (ii) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or,

b. Any articles required to be inspected under this Article unless they have been so inspected and passed, or

c. Do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. (1969, c. 893, s. 9.)

§ 106-549.24. Prohibited acts regarding certificate. — (a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner or his authorized representative.

(b) No person, firm, or corporation shall

(1) Forge any official device, mark or certificate;

(2) Without authorization from the Commissioner or his authorized representative use any offical device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Knowingly possess, without promptly notifying the Commissioner or his authorized representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board;

(6) Knowingly represent that any article has been inspected and passed, or exempted, under this Article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1969, c. 893, s. 10.)

§ 106-549.25. Slaughter, sale and transportation of equine carcasses. — No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments

at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared. (1969, c. 893, s. 11.)

§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector. — The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) and by imprisonment for not less than one year nor more than three years; and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) and by imprisonment for not less than one year nor more than three years. (1969, c. 893, s. 12.)

§ 106-549.27. Exemptions from Article. — (a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

(1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor

(2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture.

(b) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. Meat food products coming under this subsection may be stored, processed, or prepared at any freezer locker plant provided such meat food products are identified and kept separate and apart from other meat food products bearing the official mark of inspection while in the freezer locker plant.

(c) In order to accomplish the objectives of this Article, the Commissioner shall exempt any other operations which the Commissioner shall determine would best be exempted to further the purposes of this Article, to the extent such exemptions conform to the Federal Meat Inspection Act and the regulations thereunder.

(d) The slaughter of animals and preparation of articles referred to in paragraphs (a) (2) and (b) of this section shall be conducted in accordance with such sanitary conditions as the Board may by regulations prescribe. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment.

(e) The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section. (1969, c. 893, s. 13; 1971, c. 54, ss. 1, 2.)

§ 106-549.28. Regulation of storage of meat. — The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment. (1969, c. 893, s. 14.)

ARTICLE 49C.

Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.

§ 106-549.29. North Carolina Department of Agriculture responsible for cooperation. — (a) The North Carolina Department of Agriculture is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat inspection program of this State under this and the previous Article in such a manner as will effectuate the purposes of this and the previous Article.

(b) In such cooperative efforts, the North Carolina Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The North Carolina Department of Agriculture is further authorized to spend public funds of this State appropriated for administration of this and the previous Article to pay fifty per centum (50%) of the estimated total cost of the cooperative program.

(c) The North Carolina Department of Agriculture is further authorized to recommend to the said Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 301 of the Federal Meat Inspection Act; and the Commissioner or his authorized representative shall serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of section 301 of said act. (1969, c. 893, s. 15.)

§ 106-549.29:1: Repealed by Session Laws 1969, c. 893, s. 26.

§ 106-549.30. Refusal of Commissioner to inspect and certify meat. — The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this and the previous Article) refuse to provide, or withdraw, inspection service under Article 49B with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under Article 49B because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or state court, of (i) any felony, or (ii) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this or the previous Article for withdrawal of inspection services under Article 49B from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum (10%) or more of its voting stock or employee in a managerial or executive capacity. The determination and order of the Commissioner with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within 30 days after the effective date of such order in the appropriate court as provided in G.S. 106-549.33. (1969, c. 893, s. 16.)

§ 106-549.31. Enforcement against uninspected meat. — Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any inspector of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that is has not been inspected, in violation of the provisions of Article 49B or of the Federal Meat Inspection Act or the Federal Food, Drug and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such inspector, upon approval of his supervisor, for a period not to exceed 20 days, pending action under G.S. 106-549.33, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by the area supervisor of the Meat and Poultry Inspection Service. All official marks may be required by such inspector to be removed from such article or animal before it is released unless it appears to the satisfaction of the area supervisor that the article or animal is eligible to retain such marks. (1969, c. 893, s. 17.)

§ 106-549.32. Enforcement against condemned meat; appeal. — (a) Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in intrastate commerce, or is held for sale in this State after such transportation, and that (i) is or has been prepared, sold, transported or otherwise distributed or offered or received for distribution in violation of this or the previous Article, or (ii) is capable of use as human food and is adulterated or misbranded, or (iii) in any other way is in violation of this or the previous Article, shall be liable to be proceeded against and seized and condemned, at any time, on a complaint in any proper court as provided in G.S. 106-549.33 within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the order be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or animals shall not be sold contrary to the provisions of this or the previous Article. Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this or the previous Article, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by the authorized representative of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal. The proceedings in such cases shall be heard by the superior court without a jury, with the right of the aggrieved party to appeal to the Court of Appeals, and all such proceedings shall be at the suit of and in the name of this State. No appeal shall lie from the Court of Appeals.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this or the previous Article, or other laws. (1969, c. 893, s. 18.)

§ 106-549.33. Jurisdiction of superior court. — The superior court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this and the previous Article, and shall have jurisdiction in all other kinds of

cases arising under this and the previous Article, provided however, all prosecutions for criminal violations under this and the previous Article shall be in any court having jurisdiction over said violation. (1969, c. 893, s. 19.)

§ 106-549.34. Interference with inspector. — Any person who willfully assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this or the previous Article shall be guilty of a misdemeanor and fined not more than five hundred dollars ($500.00) or imprisoned for not more than six months or both fined and imprisoned. For the purposes of this section, "impede," "oppose," and "intimidate," or "interfere" shall include, but not be limited to, the use of profane and indecent language, or any act or gesture, verbal or nonverbal, which tends to cast disrespect on an inspector or the Meat and Poultry Inspection Service. Whoever, in the commission of any such acts, uses a deadly weapon, shall be fined not less than two hundred fifty dollars ($250.00) or not more than one thousand dollars ($1,000) or imprisoned not less than one year or not more than two years, or both. (1969, c. 893, s. 20.)

§ 106-549.35. Punishment for violation. — (a) Any person, firm, or corporation who violates any provision of this or the previous Article or any regulation of the Board for which no other criminal penalty is provided by this or the previous Article shall upon conviction be subject to imprisonment for not more than six months, or a fine of not more than five hundred dollars ($500.00), or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.15(1)h, such person, firm or corporation shall be subject to imprisonment for not more than three years or a fine of not more than ten thousand dollars ($10,000) or both: Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous Article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

(b) Nothing in this Article shall be construed as requiring the Commissioner or his authorized representative to report for prosecution or for the institution of condemnation or injunction proceedings, minor violations of this Article whenever he believes that the public interest will be adequately served by a suitable written notice of warning. (1969, c. 893, s. 21.)

§ 106-549.36. Gathering information; reports required; use of subpoena. — (a) The Commissioner shall also have power —

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, or corporations;

(2) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner

may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) For the purposes of this and the previous Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(1) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.33 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(2) Any of the courts designated in G.S. 106-549.33 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation, to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this or the previous Article or any order of the Commissioner made in pursuance thereof.

(4) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.

(5) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(6) No person, firm, or corporation shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceedings, criminal or otherwise, based upon or growing out of any alleged violation of this or the previous Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty

or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than six months or by both such fine and imprisonment.

(1) Any person, firm, or corporation that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, firm, or corporation subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not more than five hundred dollars ($500.00) or to imprisonment for a term of not more than six months or to both such fine and imprisonment.

(2) If any person, firm, or corporation required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person, firm, or corporation shall forfeit to this State the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person, firm, or corporation has his or its principal office or in Wake County. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.

(3) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00) or by imprisonment, not exceeding six months or by both such fine and imprisonment, in the discretion of the court. (1969, c. 893, s. 22.)

§ 106-549.37. Jurisdiction coterminous with federal law. — The requirements of this Article shall apply to persons, firms, corporation

establishments, animals, and articles regulated under the Federal Meat Inspection Act only to the extent provided for in section 408 of said federal act. (1969, c. 893, s. 23.)

§ 106-549.38. Rules and regulations of State Department of Agriculture. — All rules and regulations of the North Carolina Department of Agriculture not inconsistent with the provisions of this Article shall remain in full force and effect until amended or repealed by the Board. (1969, c. 893, s. 27.)

§ 106-549.39. Hours of inspection; overtime work; fees. — The Commissioner, or his agents, shall not be required to furnish meat inspection, as herein provided, for more than eight hours in any one day, or in excess of 40 hours in any one calendar week or on Sundays or legal holidays except on payment to the Department by the operator of an establishment under inspection of an hourly fee for each hour of State meat inspection furnished over eight hours in any one day or in excess of 40 hours in any calendar week or on Sundays and legal holidays. The Commissioner shall establish an hourly rate for such overtime at an amount sufficient to defray the cost of such inspection.

All fees received by the Department under this section shall be deposited in the general fund in the State treasury, credited to the Department of Agriculture account, and continuously appropriated to the Department for the purpose of administration and enforcement of this and the previous Article. (1969, c. 893, s. 27(a).)

§§ 106-549.40 to 106-549.48: Repealed by Session Laws 1969, c. 893, s. 26.

ARTICLE 49D.

Poultry Products Inspection Act.

§ 106-549.49. Short title. — This Article shall be designated as the North Carolina Poultry Products Inspection Act. (1971, c. 677, s. 1.)

§ 106-549.50. Purpose and policy. — (a) Poultry and poultry products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that slaughtered poultry and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded poultry or poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry and poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by this State and the United States as contemplated by this Article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this Article.

(b) It is hereby declared to be the policy of the General Assembly to provide for the inspection of poultry and poultry products and otherwise regulate the processing and distribution of such articles as hereinafter prescribed to prevent the movement or sale in intrastate commerce of poultry and poultry products which are adulterated or misbranded. It is the intent of the General Assembly that when poultry and poultry products are condemned because of disease, the reason for condemnation in such instances shall be supported by scientific fact, information, or criteria, and such condemnation under this Article shall be achieved through uniform inspection standards and uniform application thereof. (1971, c. 677, ss. 2, 3.)

§ 106-549.51. Definitions. — For purposes of this Article, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any poultry product under one or more of the following circumstances:

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 article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b. 1. If it bears or contains (by reason of administration of any substance to the live poultry or otherwise) any added poisonous or added deleterious substance (other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not otherwise deemed adulterated under paragraphs 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Board in official establishments;

c. If it consists in whole or in party of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it 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;

e. If it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter;

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 section 409 of the Federal Food, Drug, and Cosmetic Act; or

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or 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.

(2) "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry.

(3) "Board" means the North Carolina Board of Agriculture.
(4) "Capable of use of human food" shall apply to any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.
(5) "Color additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.
(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.
(7) "Container" or "package" includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.
(8) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.
(9) "Federal Poultry Products Inspection Act" means the act so entitled, approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791).
(10) "Food additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.
(11) "Immediate container" includes any consumer package; or any other container in which poultry products, not consumer packaged, are packed.
(12) "Inspection service" means the official government service within this State Department of Agriculture designated by the Commissioner as having the responsibility for carrying out the provisions of this Article.
(13) "Inspector" means an employee or official of the State Department of Agriculture authorized by the Commissioner to inspect poultry and poultry products under the authority of this Article, or any employee or official of the government of any county or other governmental subdivision of this State authorized by the Commissioner to inspect poultry and poultry products under authority of this Article, under an agreement entered into between the Department of Agriculture and such governmental subdivision.
(14) "Intrastate commerce" means commerce within this State.
(15) "Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.
(16) "Labeling" means all labels and other written, printed, or graphic matter
    a. Upon any article or any of its containers or wrappers, or
    b. Accompanying such article.
(17) "Misbranded" shall apply to any poultry product under one or more of the following circumstances:
    a. If its labeling is false or misleading in any particular;
    b. If it is offered for sale under the name of another food;
    c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;
    d. If its container is so made, formed, or filled as to be misleading;
    e. Unless it bears a label showing
        1. The name and place of business of the manufacturer, packer, or distributor; and
        2. An accurate statement of the quantity of the product in terms of weight, measure, or numerical count;

Provided, that under paragraph 2 of this subsubdivision e, reasonable variations may be permitted, and exemptions as to small packages or articles not in packages or other containers may be established, by regulations prescribed by the Board;

f. If any word, statement, or other information required by or under authority of this Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.55 unless

1. It conforms to such definition and standard, and
2. Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.55, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of subsubdivision g, unless its label bears

1. The common or usual name of the food, if any there be, and
2. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause 2 of this subsubdivision i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board, after consultation with the Secretary of Agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this subsubdivision k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

l. If it fails to bear on its containers, and in the case of nonconsumer packaged carcasses (if the Commissioner so requires) directly thereon, as the Board may by regulations prescribe, the official inspection legend and official establishment number of the establishment where the article was processed, and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the

manner of handling required to maintain the article in a wholesome condition.

(18) "Official certificate" means any certificate prescribed by regulation of the Board for issuance by an inspector or other person performing official functions under this Article.

(19) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(20) "Official establishment" means any establishment as determined by the Commissioner at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this Article.

(21) "Official inspection legend" means any symbol prescribed by regulation of the Board showing that an article was inspected for wholesomeness in accordance with this Article.

(22) "Official mark" means the official inspection legend or any other symbol prescribed by regulation of the Board to identify the status of any article or poultry under this Article.

(23) "Person" means any individual, partnership, corporation, association, or other business entity.

(24) "Pesticide chemical" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(25) "Poultry" means any domesticated bird, whether live or dead.

(26) "Poultry product" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the Board from definition as a poultry product under such conditions as the Board may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(27) "Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.

(28) "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(29) "Raw agricultural commodity" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(30) "Renderer" means any person engaged in the business of rendering carcasses, or parts or products of the carcasses, or poultry, except rendering conducted under inspection or exemption under this Article.

(31) "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container. (1971, c. 677, s. 4.)

§ 106-549.51A. Article applicable to domesticated rabbits. — The provisions of this Article shall apply to domesticated rabbits. (1971, c. 677, s. 25.)

§ 106-549.52. State and federal cooperation. — (a) The Department of Agriculture is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 5 of the Federal Poultry Products Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the poultry products inspection program of this State under this Article and in developing and administering the program of this State under G.S. 106-549.58 in such a manner as will effectuate the purposes of this Article and said federal act.

(b) In such cooperative efforts, the Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The Department of Agriculture is further authorized to spend public funds of this State appropriated for administration of this Article to pay fifty percent (50%) of the estimated total cost of the cooperative program as may be agreed upon by the Department of Agriculture and the U.S. Secretary of Agriculture.

(c) The Department of Agriculture is further authorized to recommend to the Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 5 of the Federal Poultry Products Inspection Act; and the Commissioner shall serve as the representative of the Governor for consultation with said Secretary under subsection (c) of section 5 of said act. (1971, c. 677, s. 5.)

§ 106-549.53. Inspection; condemnation of adulterated poultry. — (a) For the purpose of preventing the entry into or flow or movement in intrastate commerce of any poultry product which is capable of use as human food and is adulterated, the Commissioner shall, where and to the extent considered by him necessary, cause to be made by inspectors antemortem inspection of poultry in each official establishment engaged in processing poultry or poultry products solely for intrastate commerce.

(b) The Commissioner, whenever processing operations are being conducted, shall cause to be made by inspectors postmortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as human food in each official establishment engaged in processing such poultry or poultry products solely for intrastate commerce.

(c) All poultry carcasses and parts thereof and other poultry products found to be adulterated shall be condemned and shall, if no appeal be taken from such determination of condemnation, be destroyed for human food purposes under the supervision of an inspector: Provided, that carcasses, parts, and products, which may by reprocessing be made not adulterated, need not be so condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the carcasses, parts, or products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the Commissioner determines that the appeal is frivolous. If the determination of condemnation is sustained the carcasses, parts, and products shall be destroyed for food purposes under the supervision of an inspector. (1971, c. 677, s. 6.)

§ 106-549.54. Sanitation of premises; regulations. — (a) Each official establishment slaughtering poultry or processing poultry products solely for intrastate commerce shall have such premises, facilities, and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the Board for the purpose of preventing the entry into or flow or movement in intrastate commerce of poultry products which are adulterated.

(b) The Commissioner shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. (1971, c. 677, s. 7.)

§ 106-549.55. Labeling standards; false and misleading labels. — (a) All poultry products inspected at any official establishment under the authority of this Article and found to be not adulterated, shall at the time they leave the

establishment bear, in distinctly legible form, on their shipping containers and immediate containers as the Commissioner may require, the information required under subdivision (1) of G.S. 106-549.51. In addition, the Commissioner whenever he determines such action is practicable and necessary for the protection of the public, may require nonconsumer packaged carcasses at the time they leave the establishment to bear directly thereon in distinctly legible form any information required under such subdivision (1).

(b) The Board, whenever it determines such action is necessary for the protection of the public, may prescribe:

(1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marking or otherwise labeling any articles or poultry subject to this Article;

(2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug and Cosmetic Act, or under the Federal Poultry Products Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(c) No article subject to this Article shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Commissioner, are permitted.

(d) If the Commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this Article is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner, such person may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. Any such determination by the Commissioner shall be conclusive unless, within 30 days after receipt of notice of such final determination, the person adversely affected thereby appeals to the Superior Court of Wake County under the provisions of Chapter 150A of the General Statutes. (1971, c. 677, s. 8; 1973, c. 1331, s. 3.)

Editor's Note. — The reference to subdivision (1) of § 106-549.51 in subsection (a) appears to be an error. A reference to subdivision (17) may have been intended.

§ 106-549.56. Prohibited acts. — (a) No person shall:

(1) Slaughter any poultry or process any poultry products which are capable of use as human food at any establishment processing any such articles solely for intrastate commerce, except in compliance with the requirements of this Article;

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce,

a. Any poultry products which are capable of use as human food and are adulterated or misbranded at the time of such sale,

transportation, offer for sale or transportation, or receipt for transportation; or

b. Any poultry products required to be inspected under this Article unless they have been so inspected and passed;

(3) Do, with respect to any poultry products which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such products to be adulterated or misbranded;

(4) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the Board, except as may be authorized by regulations of the Board;

(5) Use to his own advantage, or reveal other than to the authorized representatives of the State government or any other government in their official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of this Article concerning any matter which is entitled to protection as a trade secret.

(b) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner.

(c) No person shall:

(1) Forge any official device, mark or certificate;

(2) Without authorization from the Commissioner use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Knowingly possess, without promptly notifying the Commissioner, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board; or

(6) Knowingly represent that any article has been inspected and passed, or exempted, under this Article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1971, c. 677, s. 9.)

§ 106-549.57. No poultry in violation of Article processed. — No establishment processing poultry or poultry products solely for intrastate commerce shall process any poultry or poultry product capable of use as human food except in compliance with the requirements of this Article. (1971, c. 677, s. 10.)

§ 106-549.58. Poultry not for human consumption; records; registration. — (a) Inspection shall not be provided under this Article at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise

identified as prescribed by regulations of the Board to deter their use for human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any poultry carcasses or parts or products thereof which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Board or are naturally inedible by humans.

(b) The following classes of persons shall, for such period of time as the Board may by regulations prescribe, not to exceed two years unless otherwise directed by the Commissioner for good cause shown, keep such records as are properly necessary for the effective enforcement of this Article in order to insure against adulterated or misbranded poultry products for the American consumer; and all persons subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Department of Agriculture, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any person that engages in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any poultry, for intrastate commerce, for use as human food or animal food;

(2) Any person that engages in the business of buying or selling (as poultry products brokers; wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any poultry;

(3) Any person that engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter.

(c) No person shall engage in business, in or for intrastate commerce, as a poultry products broker, renderer, or animal food manufacturer, or engage in business in intrastate commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any poultry, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for intrastate commerce, or engage in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased poultry, or parts of the carcasses of any poultry that died otherwise than by slaughter, unless, when required by regulations of the Board, he has registered with the Commissioner his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

(d) No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased poultry, or any parts of the carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the Board may prescribe to assure that such poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food. (1971, c. 677, s. 11.)

§ 106-549.59. Punishment for violations; carriers exempt; interference with enforcement. — (a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both; but if such violation involves intent to defraud, or any distribution or attempted

distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person shall be fined not more than ten thousand dollars ($10,000) or imprisoned not more than three years or both. When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article shall be fined not more than five thousand dollars ($5,000) or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than ten thousand dollars ($10,000) or imprisoned not more than 10 years, or both. (1971, c. 677, s. 12.)

§ 106-549.60. Notice of violation. — Before any violation of this Article is reported by the Commissioner to any North Carolina district attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this Article shall be construed as requiring the Commissioner or his authorized representative to report for criminal prosecution of this Article whenever he believes that the public interest will be adequately served and compliance with the Article obtained by a suitable written notice or warning. (1971, c. 677, s. 13; 1973, c. 47, s. 2.)

§ 106-549.61. Regulations authorized. — (a) The Commissioner may by regulations prescribe conditions under which poultry products capable of use as human food shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Commissioner deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited.

(b) The Board shall promulgate such other rules and regulations as are necessary to carry out the provisions of this Article.

(c) When opportunity is afforded for submission of comments by interested persons on proposed rules or regulations under this Article, it shall include opportunity for oral presentation of views. (1971, c. 677, s. 14.)

§ 106-549.62. Intrastate operations exemptions. — (a) The Board shall, by regulation and under such conditions, including requirements, as to sanitary standards, practices, and procedures as it may prescribe, exempt from specific provisions of this Article with respect to processing of poultry or poultry

products solely for intrastate commerce and distribution of poultry or poultry products only in such commerce:

(1) Retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up of poultry products on the premises where such sales to consumers are made;

(2) For such period of time as the Commissioner determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this Article, any person engaged in the processing of poultry or poultry products and the poultry or poultry products processed by such person: Provided, however, that no such exemption shall continue in effect more than 120 days after enactment of this Article;

(3) Persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the Commissioner determines necessary to avoid conflict with such requirements while still effectuating the purposes of this Article;

(4) The slaughtering by any person of poultry of his own raising, and the processing by him and transportation of the poultry products exclusively for use by him and members of his household and his nonpaying guests and employees;

(5) The custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: Provided, that such custom slaughterer does not engage in the business of buying or selling any poultry products capable of use as human food;

(6) The slaughtering and processing of poultry products by any poultry producer on his own premises with respect to sound and healthy poultry raised on his premises and the distribution by any person of the poultry products derived from such operations, if, in lieu of other labeling requirements, such poultry products are identified with the name and address of such poultry producer, and if they are not otherwise misbranded, and are sound, clean, and fit for human food when so distributed; and

(7) The slaughtering of sound and healthy poultry or the processing of poultry products of such poultry by any poultry producer or other person for distribution by him directly to household consumers, restaurants, hotels, and boardinghouses, for use in their own dining rooms, or in the preparation of meals for sales direct to consumers, if, in lieu of other labeling requirements, such poultry products are identified with the name and address of the processor, and if they are not otherwise misbranded and are sound, clean, and fit for human food when distributed by such processor.

(b) In addition to the specific exemptions authorized in subsection (a), the Board shall, when it determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by regulation, consistent with subsection (c) for the exemption of the operation and products of small enterprises (including poultry producers), not exempted under subsection (a), which are engaged in slaughtering and/or cutting up poultry for distribution as carcasses or parts thereof, solely for distribution within this State, from such provisions of this Article as it deems appropriate, while still protecting the public from adulterated or misbranded

products, under such conditions, including sanitary requirements, as it shall prescribe to effectuate the purposes of this Article.

(c) The exemptions provided for in subdivisions (a)(6) and (7) above shall not apply if the poultry producer or other person engages in the current calendar year in the business of buying or selling any poultry or poultry products other than as specified in such subdivisions. No exemption under subdivisions (a)(6) or (7) or subsection (b) shall apply to any poultry producer or other person who slaughters or processes the products of more than 5,000 turkeys or an equivalent number of poultry of all species in the current calendar year (four birds of other species being deemed the equivalent of one turkey).

(d) The provisions of this Article requiring inspection shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments, if no poultry or poultry products are processed at the establishment for distribution outside this State or otherwise subject to inspection under the Federal Poultry Products Inspection Act.

(e) The provisions of this Article shall not apply to poultry producers with respect to poultry of their own raising on their own farms if (i) such producers slaughter not more than 250 turkeys, or not more than an equivalent number of birds of all species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey); (ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms; and (iii) such poultry moves only in intrastate commerce.

(f) The adulteration and misbranding provisions of this Article, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection under this section, except as otherwise specified under subsections (a), (b), or (e).

(g) The Commissioner may by order suspend or terminate any exemption under subsections (a) or (b) of this section with respect to any person whenever he finds that such action will aid in effectuating the purposes of this Article. (1971, c. 677, s. 15.)

§ 106-549.63. Commissioner may limit entry of products to establishments. — The Commissioner may limit the entry of poultry products and other materials into any official establishment, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this Article. (1971, c. 677, s. 16.)

§ 106-549.64. Refusal of inspection services; hearing; appeal. — (a) The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Article) refuse to provide, or withdraw, inspection service under this Article with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection upon this Article because the applicant or recipient or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or State court, within the previous 10 years of

(1) Any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food or fraud in connection with transactions in food; or

(2) Any felony, involving fraud, bribery, extortion, or any other act or circumstances indicating a lack of the integrity needed for the conduct

of operations affecting the public health. For the purpose of this subsection a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum (10%) or more of its voting stock or employee in a managerial or executive capacity.

(b) Upon the withdrawal of inspection service from any official establishment for failure to destroy condemned poultry products as required under G.S. 106-549.53, or other failure of an official establishment to comply with the requirements as to premises, facilities, or equipment, or the operation thereof, as provided in G.S. 106-549.54, or the refusal of inspection service to any applicant therefor because of failure to comply with any requirements under G.S. 106-549.54, the applicant for, or recipient of, the service shall, upon request, be afforded opportunity for a hearing with respect to the merits or validity of such action; but such withdrawal or refusal shall continue in effect unless otherwise ordered by the Commissioner.

(c) The determination and order of the Commissioner when made after opportunity for hearing, with respect to withdrawal or refusal of inspection service under this Article shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within 30 days after the effective date of such order in the Superior Court of Wake County. Judicial review of any such order shall be under the provisions of Chapter 150A of the General Statutes. (1971, c. 677, s. 17; 1973, c. 1331, s. 3.)

§ 106-549.65. Product detained if in violation. — Whenever any poultry product, or any product exempted from the definition of a poultry product, or any dead, dying, disabled, or diseased poultry is found by any inspector of the Meat and Poultry Inspection Service of the Department of Agriculture upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this Article or of any other State or federal law or that it has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under G.S. 106-549.66 or notification of any federal, State, or other governmental authorities having jurisdiction over such article or poultry, and shall not be moved by any person, from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or poultry before it is released unless it appears to the satisfaction of the area supervisor of the Department of Agriculture Poultry Inspection Service that the article or poultry is eligible to retain such marks. (1971, c. 677, s. 18.)

§ 106-549.66. Seizure or condemnation proceedings. — (a) Any poultry product, or any dead, dying, or disabled, or diseased poultry, that is being transported in intrastate commerce, subject to this Article, or is held for sale in this State after such transportation, and that

(1) Is or has been processed, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Article, or

(2) Is capable of use as human food and is adulterated or misbranded, or

(3) In any other way is in violation of this Article, shall be liable to be proceeded against and seized and condemned, at any time, on an affidavit filed in any superior court within the jurisdiction of which the article or poultry is found. If the article or poultry is condemned it shall, after entry of the judgment, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and

fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or poultry shall not be sold contrary to the provisions of this Article, or the Federal Poultry Products Inspection Act or the Federal Food, Drug, and Cosmetic Act: Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or poultry shall not be sold or otherwise disposed of contrary to the provisions of this Article or the laws of the United States, the court may direct that such article or poultry be delivered to the owner thereof subject to such supervision by authorized representatives of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or poultry and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or poultry. The proceedings in such cases shall conform, as nearly as may be, to civil actions and either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the State.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this Article, or other laws. (1971, c. 677, s. 19.)

§ 106-549.67. Superior court jurisdiction; proceedings in name of State. — The superior court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this Article, and shall have jurisdiction in all other kinds of cases arising under this Article. All proceedings for the enforcement or to restrain violations of this Article shall be by and in the name of this State. (1971, c. 677, s. 20.)

§ 106-549.68. Powers of Commissioner; subpoenas; mandamus; self-incrimination; penalties. — (a) The Commissioner shall also have power:

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons;

(2) To require, by general or special orders, persons engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) (1) For the purposes of this Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.67 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(3) Any of the courts designated in G.S. 106-549.67 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs or [of] mandamus commanding any person to comply with the provisions of this Article or any order of the Commissioner made in pursuance thereof.

(5) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.

(6) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(7) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) (1) Any person that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than

five thousand dollars ($5,000), or by imprisonment for not more than one year, or by both such fine and imprisonment.

(2) Any person that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of any person subject to this Article or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this Article in his or its possession or within his or its control, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000), or to imprisonment for a term of not more than two years, or to both such fine and imprisonment.

(3) If any person required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person shall forfeit to this State the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person has his or its principal office or in any county in which he or it shall do business. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.

(4) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars ($2,000), or by imprisonment, not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. (1971, c. 677, s. 21.)

§ 106-549.68A. Article applicable to those regulated by federal act. — The requirements of this Article shall apply to persons, establishments, poultry, poultry products and other articles regulated under the Federal Poultry Products Inspection Act only to the extent provided for in section 23 of said federal act. (1971, c. 677, s. 22.)

§ 106-549.69. Inspection costs. — The cost of inspection rendered under the requirements of this Article, shall be borne by this State, except as provided in G.S. 106-549.52 and except that the cost of overtime and holiday work performed in establishments subject to the provisions of this Article, at such rates as the Commissioner may determine shall be borne by such establishments. Sums received by the Department of Agriculture in reimbursement for sums paid out for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section. (1971, c. 677, s. 23.)

ARTICLE 49E.

Disposal of Dead Diseased Poultry at Commercial Farms.

§ 106-549.70. Disposal pit or incinerator. — Every person, firm or corporation engaged in growing poultry, turkeys or other domestic fowl or products thereof for commercial purposes shall provide and maintain a disposal pit or incinerator of a size and design, approved by the Department of Agriculture, wherein all dead diseased poultry carcasses shall be disposed of in a manner to prevent the spread of disease; provided, that the provisions of this Article shall not apply to growers of poultry, turkeys or other domestic fowl with flocks of 200 or less. (1961, c. 1197, s. 1.)

§ 106-549.71. Penalty for violation. — Any person, firm or corporation violating the provisions of this Article shall, upon conviction, be fined or imprisoned in the discretion of the court. (1961, c. 1197, s. 2.)

ARTICLE 49F.

Biological Residues in Animals.

§ 106-549.81. Definitions. — For the purpose of this Article, the following terms shall have the meanings ascribed to them in this section:

(1) "Animal" means any member of the animal kingdom except man.

(2) "Animal feed" means any meat, grain, forage, or other food of any plant, animal or mineral origin, or any combination thereof, which is normally fed to any animal.

(3) "Animal produce" means any product derived from any animal, whether suitable or not for human consumption.

(4) "Biological residue" means any substance, including metabolites, remaining in or on any animal prior to or at the time of slaughter or in any of its tissues after slaughter, or in or on any animal product or animal feed, as the result of treatment with, or exposure, of the animal, animal product, or animal feed to any pesticide, hormone, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, or other therapeutic or prophylactic agent.

(5) "Board" means the North Carolina Board of Agriculture.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized delegate.

(7) "Person" means any individual, partnership, corporation, association, cooperative or other legal entity.

(8) "State" means the State of North Carolina. (1971, c. 1183, s. 1.)

§ 106-549.82. Detention or quarantine; lifting quarantine; burden of proof. — Any animal, animal product, or animal feed which the Commissioner has reasonable cause to believe contains or bears any biological residue may be immediately detained or quarantined by written order of the Commissioner until it can be determined in a manner acceptable to the Commissioner that the animal, animal feed, or animal product does not contain or bear a biological residue, or that the biological residue therein is within tolerances which are established by, or approved by, the Board, and the detention or quarantine is removed; or the animal, animal product or animal feed is destroyed or otherwise disposed of in a manner acceptable to the Commissioner; or in the case of a live animal, it has been treated in a manner acceptable to the Commissioner to reduce the level of any biological residue to a level acceptable to the Commissioner. The burden of proof under this section shall be on the owner or custodian of such animal, animal feed or animal product. (1971, c. 1183, s. 2.)

§ 106-549.83. Appellate review; order pending appeal; bond. — Any order or [of] quarantine or detention made by the Commissioner may be appealed by the aggrieved party to the superior court of the county wherein such animal, animal product or animal feed is quarantined or detained. The superior court judge, on at least 24 hours' notice, may hear said appeal in or out of term, in court or in chambers and may affirm, reverse or modify the order of quarantine or detention imposing such conditions as he may deem just and proper. Any party may appeal from the superior court to the Court of Appeals. Pending an appeal from the Commissioner or the superior court, any regular or special superior court judge residing in or holding court in the district may enter such orders as he deems necessary for the preservation or disposition of the animal, animal product or feed, and may require the posting of a bond for the faithful performance of such order. (1971, c. 1183, s. 3.)

§ 106-549.84. Movement of contaminated animals forbidden. — (a) No person shall ship, transport, or otherwise move, or deliver, or receive for movement, any animal, animal product, or animal feed under detention or quarantine pursuant to G.S. 106-549.82, except under written permit of the Commissioner and in accordance with the conditions stated in such written permission, or until the detention or quarantine order has been revoked by written order of the Commissioner.

(b) No person shall ship, transport, or otherwise move, or deliver or receive for movement any animal, animal product, or animal feed which he knows, or by the exercise of reasonable care would know, contains or bears a biological residue which exceeds the tolerances established or approved by the Board. (1971, c. 1183, s. 4.)

§ 106-549.85. Inspection of animals, records, etc. — The Commissioner may enter any place within the State at all reasonable times where any animal, animal product or animal feed is kept to examine the facilities, inventory and/or copy the records thereof, and to take reasonable samples of any such animal, animal product or animal feed after giving notice in writing to the owner or custodian of the premises to be entered. If such person shall refuse to consent to such entry, the Commissioner may apply to any district court judge and such judge may order, without notice, that the owner or custodian of any place where any animal, animal product or animal feed is kept to permit the Commissioner to enter such place for the purposes herein stated and failure by any person to obey such order may be punished as for contempt. (1971, c. 1183, s. 5.)

§ 106-549.86. Investigation to discover violation. — The Commissioner shall make such investigations or inspections as he deems necessary to determine whether any person has violated, or is violating, any provision of this Article or any regulation promulgated thereunder, and when any biological residue is found in or on any animal, animal product, or animal feed, the Commissioner may make such investigation or inspection as he deems necessary to determine the source of the substance which resulted in the biological residue. (1971, c. 1183, s. 6.)

§ 106-549.87. Promulgation of regulation. — The North Carolina Board of Agriculture is hereby authorized to promulgate regulations as it may deem necessary to effectuate the purposes of this Article, including but not limited to, tolerances for biological residues. It shall be unlawful for any person to violate any provision of this Article or any regulation promulgated by the Board under authority of this Article. (1971, c. 1183, s. 7.)

§ 106-549.88. Penalties. — Any person who violates any provisions of this Article or any regulations thereunder shall, upon conviction thereof, be subject

to a fine of not more than five hundred dollars ($500.00) or imprisonment not to exceed six months, or both fine and imprisonment. (1971, c. 1183, s. 8.)

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-550. Policy as to promotion of use of, and markets for, farm products; tobacco excluded. — It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, swine, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural product of tobacco, with respect to which a separate provision and enactment has heretofore been made. (1947, c. 1018, s. 1; 1951, c. 1172, s. 1; 1957, cc. 260, 1352.)

Editor's Note. — For comment on article, suggesting its invalidity as an unlawful delegation of governmental power, see 25 N.C.L. Rev. 396.

§ 106-551. Federal Agricultural Marketing Act. — The passage by the Seventy-Ninth Congress of a law designated as Public Law 733, and more particularly Title II of that act, cited as "Agricultural Marketing Act of 1946," makes it all the more important for producers, handlers, processors and others of specific agricultural commodities to associate themselves in action programs, separately and with public and private agencies, to obtain the greatest and most immediate benefits under the provisions of such law, in respect to research, studies and problems of marketing, transportation and distribution. (1947, c. 1018, s. 2.)

§ 106-552. Associations, activity, etc., deemed not in restraint of trade. — No association, meeting or activity undertaken in pursuance of the provisions of this Article and intended to benefit all of the producers, handlers and processors of a particular commodity shall be deemed or considered illegal or in restraint of trade. (1947, c. 1018, s. 3.)

§ 106-553. Policy as to referenda, assessments, etc., for promoting use and sale of farm products. — It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the State that farmers, producers and growers commercially producing the commodities herein referred to shall be permitted by referendum to be held among the respective groups and subject to the provisions of this Article, to levy upon themselves an assessment on such respective commodities or upon the acreage used in the production of the same and provide for the collection of the same, for the purpose of financing or contributing towards the financing of a program of advertising and other methods designed to increase the consumption of and the domestic as well as foreign markets for such agricultural products. 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. 4; 1951, c. 1172, s. 2.)

§ 106-554. Application to Board of Agriculture for authorization of referendum. — Any existing commission, council, board or other agency fairly representative of the growers and producers of any agricultural commodity herein referred to, and any such commission, council, board or other agency hereafter created for and fairly representative of the growers or producers of any such agricultural commodity herein referred to, may at any time after the passage and ratification of this Article make application to the Board of Agriculture of the State of North Carolina for certification and approval for the purpose of conducting a referendum among the growers or producers of such particular agricultural commodity, for commercial purposes, upon the question of levying an assessment under the provisions of this Article, collecting and utilizing the same for the purposes stated in such referendum. (1947, c. 1018, s. 5.)

§ 106-555. Action by Board on application. — Upon the filing with the Board of Agriculture of such application on the part of any commission, council, board or other agency, the said Board of Agriculture shall within 30 days thereafter meet and consider such application; and if upon such consideration the said Board of Agriculture shall find that the commission, council, board or other agency making such application is fairly representative of and has been duly chosen and delegated as representative of the growers producing such commodity, and shall otherwise find and determine that such application is in conformity with the provisions of this Article and the purposes herein stated, then and in such an event it shall be the duty of the Board of Agriculture to certify such commission, council, board or other agency as the duly delegated and authorized group or agency representative of the commercial growers and producers of such agricultural commodity, and shall likewise certify that such agency is duly authorized to conduct among the growers and producers of such commodity a referendum for the purposes herein stated. (1947, c. 1018, s. 6.)

§ 106-556. Conduct of referendum among growers and producers on question of assessments. — Upon being so certified by the said Board of Agriculture in the manner hereinbefore set forth, such commission, council, board or other agency shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of such particular agricultural commodity a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. Such referendum may be conducted either on a statewide or area basis. (1947, c. 1018, s. 7.)

§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment. — With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent (½ of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on volume not to exceed six cents (6¢) per hundredweight of milk sold. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268.)

§ 106-557.1. Ballot by mail. — (a) As an alternative method of conducting a referendum under the provisions of this Article, the certified agency in its discretion may conduct the referendum by a mail ballot as herein provided. In the event that a certified agency determines in its discretion to conduct a mail ballot, public notice of said mail ballot shall be made at least 30 days before the date of said referendum. Said notice shall contain the same information required by G.S. 106-557, except that the notice will also state that the ballot is to be conducted by mail rather than at polling places. The notice shall also state that official ballots are being mailed on a date specified in the notice to all persons known by the certified agency to be eligible to vote and that any person not receiving by mail an official ballot by a date specified in the notice will have 10 days thereafter to apply for an official ballot at the office of the certified agency. The notice shall state the deadline for the receipt of all ballots and the address of the certified agency.

Official ballots shall be prepared by the certified agency and mailed by first-class mail to the last known address of all persons known by the certified agency to be eligible to vote. As announced in the public notice, said ballots shall be made available for a period of not less than 10 days, to those who are eligible to vote in said referendum and did not receive a ballot by mail.

Before any person shall receive an official ballot, he shall furnish such proof as the certified agency may require of his eligibility to vote in said referendum. The certified agency shall keep a list of those persons who receive official ballots. No person may receive more than one official ballot unless he satisfies the certified agency that his ballot has been lost or destroyed.

No votes shall be counted which are not on official ballots. To be eligible to be counted, ballots must be received by the certified agency at the place and by the deadline previously announced in the public notice of said referendum.

(b) The provisions of this section shall not apply to the North Carolina Potato Association and the North Carolina Soybean Association. (1969, c. 111.)

§ 106-558. Management of referendum; expenses. — The arrangements for and management of any referendum conducted under the provisions of this Article shall be under the direction of the commission, council, board or other agency duly certified and authorized to conduct the same, and any and all expenses in connection therewith shall be borne by such commission, council, board or agency. (1947, c. 1018, s. 9.)

§ 106-559. Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association. — Any referendum conducted under the provisions of this Article may be held either on an area or statewide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or statewide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and sharecroppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. Provided, that notwithstanding any other provision of this Chapter, the North Carolina Cotton Promotion Association, Inc., in 1967 shall hold a referendum, pursuant to law, for the years 1969 and 1970, or for the years 1969 through 1973, in its discretion. Thereafter, the North Carolina Cotton Promotion Association, Inc. shall conduct either triennial or sexennial referendums as provided by law. (1947, c. 1018, s. 10; 1967, cc. 213, 561.)

§ 106-560. Effect of more than one-third vote against assessment. — If in such referendum with respect to any agricultural commodity herein referred to

more than one third of the farmers and producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1947, c. 1018, s. 11.)

§ 106-561. Effect of two-thirds vote for assessment. — If in such referendum called under the provisions of this Article two thirds or more of the farmers or producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the agricultural commodity covered thereby, then such assessment shall be collected in the manner determined and announced by the agency conducting such referendum. (1947, c. 1018, s. 12.)

§ 106-562. Regulations as to referendum; notice to farm organizations and county agents. — The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural commodity duly certified by the Board of Agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the State of North Carolina at least 30 days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which such agricultural product is grown. Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied — which assessment in any event shall not exceed one half of one percent (½ of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted — and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this Article. (1947, c. 1018, s. 13; 1967, c. 774, s. 2.)

§ 106-563. Distribution of ballots; arrangements for holding referendum; declaration of results. — The duly certified agency of the producers of any agricultural product among whom a referendum shall be conducted under the provisions of this Article shall likewise prepare and distribute in advance of such referendum all necessary ballots for the purposes thereof, and shall, under rules and regulations promulgated by said agency, arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within 10 days thereafter the said agency shall canvass and publicly declare the result of such referendum. (1947, c. 1018, s. 14.)

§ 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.

§ 106-564.2. Further alternative method for collection of assessments. — As an alternate method for the collection of assessments provided for in G.S. 106-564, the duly certified agency representing the producers of peaches, apples or other tree fruits, is hereby authorized to establish the names, addresses and number of trees or acres of trees and certify same to the Commissioner of Agriculture. The Commissioner of Agriculture shall then notify by registered letter such certified producers that on or before the date specified by the duly certified agency, the assessments shall be paid to the Commissioner of Agriculture by the producers. The date of collections of such assessments may be established by the duly certified agency representing the producers of any agricultural product referred to in G.S. 106-550. (1955, c. 374.)

§ 106-564.3. Alternative method for collection of assessments relating to cattle. — As an alternative method for the collection of assessments provided for in Article 50 of Chapter 106 of the General Statutes, as amended, and as the same relates to all cattle, including those cattle sold for slaughter, upon the request of the duly certified agency of the producers of all cattle, including those which are to be sold for slaughter, the Commissioner of Agriculture shall notify, by registered letter, all livestock auction markets, slaughterhouses, abattoirs, packinghouses, and any and all persons, firms and corporations, engaged in the buying, selling or handling of cattle in this State, and on and after the date specified in the letter, the assessments approved and in force under said referendum shall be deducted by the purchaser, or his agent or representative, from the purchase price of all cattle bought, acquired or sold. It shall be unlawful for any livestock auction market, slaughterhouse, abattoir, packinghouse or the administrators or managers or agents of same or for any person, firm or corporation to acquire, buy or sell any cattle, including cattle for slaughter, without deducting the assessments previously authorized by said referendum. The assessment or assessments for any month so deducted, shall, on or before the twentieth day of the following month, be remitted by such purchaser as above described, 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 of all such cattle entitled thereto. The books and records of all such livestock auction markets, slaughterhouses, abattoirs, packinghouses, or persons, firms or corporations engaged in buying, acquiring or selling all cattle shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents. Provided, however, that if any livestock auction market, slaughterhouse, abattoir, packinghouse, or any person, firm or corporation engaged in buying, selling or handling cattle in this State shall fail to collect or pay such assessments so deducted to the Commissioner of Agriculture of North Carolina, as herein provided, then and in such event suit may be brought by the duly certified agency concerned in a court of competent jurisdiction to enforce the collection of such assessments. (1959, c. 1176; 1969, c. 184.)

§ 106-565. Subsequent referendum. — In the event such referendum so to be conducted as herein provided shall not be supported by two thirds or more of those eligible for participation therein and voting therein, then the duly certified agency conducting the said referendum shall have full power and authority to call another referendum for the purposes herein set forth in the next succeeding year, on the question of an annual assessment for three years. (1947, c. 1018, s. 16.)

§ 106-566. Referendum as to continuance of assessments approved at prior referendum. — In the event the first such referendum or any subsequent referendum is carried by the votes of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are levied annually for the period set forth in the call for such referendum, then the agency conducting such referendum shall in its discretion have full power and authority to call and conduct during the third year of such first period or the last year of any subsequent period another referendum in which the farmers and producers of such agricultural commodity shall vote upon the question of whether or not such assessments shall be continued for the next ensuing three years or continued for the next ensuing six years. (1947, c. 1018, s. 17; 1965, c. 1046, s. 2.)

§ 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.

§ 106-568. Publication of financial statement by treasurer of agency; bond required. — In the event of the levying and collection of assessments as herein provided, the treasurer of the agency conducting same shall within 30 days after the end of any calendar year in which such assessments are collected, publish through the medium of the press of the State a statement of the amount or amounts so received and collected by him under the provisions of this Article. Before collecting and receiving such assessments, such treasurer shall give a bond in the amount of at least the estimated total of such assessments as will be collected, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency conducting such referendum and to be filed with the chairman or executive head of such agency. (1947, c. 1018, s. 19.)

ARTICLE 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.1. Policy as to joint action of farmers. — It is declared to be in the public interest that North Carolina farmers producing agricultural products of all kinds, including cotton, tobacco, peanuts, soybeans, potatoes, vegetables, berries, fruits, livestock, livestock products, poultry and turkeys, and any other agricultural products having domestic and/or foreign markets, be permitted to act jointly in cooperation with each other in encouraging an expanding program

of agricultural research and the dissemination of agricultural research findings. (1951, c. 827, s. 1.)

§ 106-568.2. Policy as to referendum and assessment. — It is further declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of five cents (5¢) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts. (1951, c. 827, s. 2.)

§ 106-568.3. Action of Board of Agriculture on petition for referendum. — The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this Article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. (1951, c. 827, s. 3.)

§ 106-568.4. By whom referendum to be managed; announcement. — The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall arrange for and manage any referendum conducted under the provisions of this Article but shall, 60 days before the date upon which it is to be held, fix, determine, and publicly announce in each county the date, hours, and polling places in that county for voting in such referendum, the amount and basis proposed to be collected, the means by which such assessment shall be collected as authorized by the growers and producers, and the general purposes for which said funds so collected shall be applied. (1951, c. 827, s. 4.)

§ 106-568.5. When assessment shall and shall not be levied. — If in such referendum more than one third of the farmers and producers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such event no assessment shall be levied or collected, but if two thirds or more of such farmers and producers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment, then such assessment shall be collected in the manner hereinafter provided. (1951, c. 827, s. 5.)

§ 106-568.6. Determination and notice of date, area, hours, voting places, etc. — The three organizations herein designated to hold such referendum shall fix the date, area, hours, voting places, rules and regulations with respect to the holding of such referendum and cause the same to be published in the press of the State at least 60 days before holding such referendum and shall certify such information to the State Commissioner of Agriculture and to each of the farm organizations of the State. Such notice, so published and furnished to the several agencies, shall contain, in addition to the other information herein required, a statement of the amount of annual assessment proposed to be levied,

and the purposes for which such assessment shall be applied. (1951, c. 827, s. 6.)

§ 106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results. — The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall prepare and distribute in advance of such referendum all necessary ballots and shall under rules and regulations, adopted and promulgated by the organizations holding such referendum, arrange for the necessary poll holders and shall, within 10 days after the date of such referendum, canvass and publicly declare the results thereof. (1951, c. 827, s. 7.)

§ 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.

§ 106-568.9. Refunds to farmers. — In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such

assessment shall have been added and collected under the provisions of this Article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within 30 days from the date of which said assessment is collected from such farmer or producer. (1951, c. 827, s. 9.)

§ 106-568.10. Subsequent referenda; continuation of assessment. — If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for six years. In the event the assessment carried in a referendum by two thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the six years set forth in the call for such referendum and a new referendum may be called and conducted during the sixth year of such period on the question of whether or not such assessment shall be continued for the next ensuing six years. (1951, c. 827, s. 10; 1967, c. 631, s. 2.)

§ 106-568.11. Effect of more than one-third vote against assessment. — If in such referendum called under the provisions of this Article more than one third of the farmers and producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1951, c. 827, s. 11.)

§ 106-568.12. Effect of two-thirds vote in favor of assessment. — If in such referendum called under the provisions of this Article two thirds or more of the farmers or producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the commodities covered thereby, then such assessment shall be collected in the manner prescribed herein (determined and announced by the agencies conducting such referendum). (1951, c. 827, s. 12.)

ARTICLE 50B.

North Carolina Agricultural Hall of Fame.

§ 106-568.13. North Carolina Agricultural Hall of Fame created. — There is hereby created and established as an agency of the State of North Carolina the North Carolina Agricultural Hall of Fame. (1953, c. 1129, s. 1.)

State Government Reorganization. — The North Carolina Agricultural Hall of Fame was transferred to the Department of Agriculture by § 143A-61, enacted by Session Laws 1971, c. 864.

§ 106-568.14. Board of directors; membership; compensation. — The North Carolina Agricultural Hall of Fame shall be under the general supervision and control of a board of directors consisting of the following: the Commissioner of Agriculture of the State of North Carolina, who shall act as chairman; the Director of the North Carolina Agricultural Extension Service; the State Supervisor of Vocational Agriculture; the President of the North Carolina Farm Bureau Federation; the Master of the State Grange, the foregoing being ex officio members; and three members who shall be appointed by the Governor

of North Carolina. All of said members shall serve without compensation. (1953, c. 1129, s. 2.)

§ 106-568.15. Terms of directors. — One of the appointive members shall be appointed for a term of two years, one for a term of four years and one for a term of six years. The successor to each of the appointive members shall be appointed for a term of six years, and in case of a vacancy, the Governor is authorized to appoint a successor for the remainder of the unexpired term. The ex officio members shall serve so long as they hold their respective offices or positions which entitle them to ex officio membership on said board of directors. (1953, c. 1129, s. 3.)

§ 106-568.16. Admission of candidates to Hall of Fame. — The said board is hereby empowered to formulate rules and regulations governing acceptance and admission of candidates to said North Carolina Agricultural Hall of Fame, provided that no name shall be accepted until an authentic and written record of achievements of said person in agricultural activities shall have been presented to and accepted by a majority vote of said board created by this Article, and provided that both men and women are eligible for recognition. (1953, c. 1129, s. 4.)

§ 106-568.17. Acceptance of gifts, bequests and awards; display thereof. — The said board is hereby empowered to accept and receive gifts, bequests, and awards which are to become the sole property of said North Carolina Agricultural Hall of Fame and are to be kept in a proper manner in a suitable room or hall in some state-owned building in Raleigh, provided that duplicates of such gifts, bequests, and awards may be displayed in a suitable room or hall in the School of Agriculture of the North Carolina State College of Agriculture and Engineering at Raleigh, North Carolina. (1953, c. 1129, s. 5.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see §§ 116-2, 116-4.

ARTICLE 50C.

Promotion of Sale and Use of Tobacco.

§ 106-568.18. Policy as to joint action of farmers. — It is hereby declared to be in the public interest that the farmers of North Carolina who produce flue-cured tobacco be permitted and encouraged to act jointly in promoting and stimulating, by organized methods and through the medium established for such purpose, export trade for flue-cured tobacco and the use of tobacco everywhere. (1959, c. 309, s. 1.)

§ 106-568.19. Policy as to referendum on question of annual assessment. — For the purpose of raising reasonable and necessary funds for producer participation in the operations of the agency set up under farmer sponsorship for the promotion of export trade in flue-cured tobacco and the use of tobacco everywhere, it is proper, desirable, necessary and in the public interest that the farmers in this State engaged in the production of flue-cured tobacco shall have the opportunity and privilege of participating in a referendum to be held as hereinafter provided, in which referendum there shall be determined the question of whether or not the farmers of the State engaged in the production of flue-cured tobacco shall levy upon themselves an annual assessment for the purposes herein stated. (1959, c. 309, s. 2.)

§ 106-568.20. Referendum in 1961 on assessment for next three years. — During the year 1961 and upon the exact date in such year as may be determined in the manner hereinafter set forth and under rules and regulations as

established under the provisions of this Article, there shall be held in every county in North Carolina in which flue-cured tobacco is produced a referendum to be participated in by all farmers engaged in the production of flue-cured tobacco, including owners of farms on which such tobacco is produced, tenants and sharecroppers, in which referendum said individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years (1962, 1963 and 1964), such amount as may have been theretofore or as may be thereafter determined by the board of directors of Tobacco Associates, Incorporated, but not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina. (1959, c. 309, s. 3.)

§ 106-568.21. Effect of more than one-third vote against assessment in 1961 referendum. — If in such referendum more than one third of the tobacco farmers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then no assessment shall be levied or collected pursuant to that referendum. (1959, c. 309, s. 4.)

§ 106-568.22. Effect of two-thirds vote for assessment in 1961 referendum. — If in such referendum two thirds or more of the eligible tobacco farmers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment to be determined by the board of directors of Tobacco Associates, Incorporated, but in an amount of not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, then such assessment shall be collected in the manner hereinafter provided. (1959, c. 309, s. 5.)

§ 106-568.23. Regulations as to 1961 referendum; notice to farm organizations and county agents. — The exact date in the said year 1961, on which such referendum shall be held and the hours, voting places, and rules and regulations under which such referendum shall be conducted, shall be established and determined by the board of directors of the North Carolina corporation known and designated as Tobacco Associates, Incorporated, established under the leadership of farm organizations in the State of North Carolina for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and the use of tobacco everywhere; the said referendum date, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published through the medium of the public press in the State of North Carolina by said board of directors at least 30 days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which flue-cured tobacco is grown. (1959, c. 309, s. 6.)

§ 106-568.24. Distribution of ballots; arrangements for holding 1961 referendum; declaration of results. — The said board of directors of Tobacco Associates, Incorporated, shall likewise prepare and distribute in advance of said referendum all necessary ballots for the purpose thereof, and shall under the rules and regulations promulgated by said board arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within 10 days thereafter the said board of directors shall canvass and publicly declare the results of such referendum. (1959, c. 309, s. 7.)

§ 106-568.25. Question at 1961 referendum. — Said referendum shall be upon the question of whether or not the farmers eligible for participation therein and voting therein shall favor an assessment for the period of three years, 1962, 1963 and 1964, in an amount in each of said years as determined by or to be

determined by the board of directors of Tobacco Associates, Incorporated but not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, for the purpose of providing farmer participation in the fund and through the agency established for the stimulation, expansion and development of export markets for flue-cured tobacco and the encouragement of the use of flue-cured tobacco everywhere. (1959, c. 309, s. 8.)

§ 106-568.26. Collection of assessments; custody and use of funds. — In the event two thirds or more of the eligible farmers voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the years herein set forth and under such method, rules and regulations as may be determined by the board of directors of the said Tobacco Associates, Incorporated, and the said assessment so collected shall be paid into the treasurer [treasury] of said Tobacco Associates, Incorporated, to be used along with funds from other sources, for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and encouraging the use of flue-cured tobacco everywhere. (1959, c. 309, s. 9.)

§ 106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated. — No assessment shall be made pursuant to this Article unless same shall receive the affirmative vote of not less than two thirds of the members of the board of directors of Tobacco Associates, Incorporated, including the affirmative vote of not less than two thirds of such board members who were elected by North Carolina farm organizations. (1959, c. 309, s. 10.)

§ 106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund. — In the event any referendum authorized by this Article is carried in the affirmative by such two-thirds vote and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the board of directors of Tobacco Associates, Incorporated, any farmer or tobacco producer upon whom and against whom any such annual assessment shall have been levied and collected under the provisions of this Article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said Tobacco Associates, Incorporated, a refund of such annual assessment so collected from such farmer or producer of tobacco, provided such demand for refund is made in writing within 30 days from the date on which said assessment is collected from such farmer or producer or deducted from the proceeds of the sale of tobacco of such farmer or producer. (1959, c. 309, s. 11.)

§ 106-568.29. Subsequent referendum after defeat of assessment. — In the event any referendum conducted as provided for in this Article shall not be supported by two thirds or more of those voting therein, then the board of directors of Tobacco Associates, Incorporated shall have full power and authority to call another referendum for the purposes herein set forth in any succeeding year, on the question of an annual assessment for the next three years or less. If the referendum is carried as provided in this Article, then the assessments may be levied and collected as provided in this Article. (1959, c. 309, s. 12.)

§ 106-568.30. Referendum as to continuance of assessments approved at prior referendum. — In the event any referendum, held at any time under the provisions of this Article, is carried by the vote of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are being levied annually, then the board of directors of Tobacco Associates, Incorporated shall, in its discretion, have full power and authority to call and conduct during the last year of such period another referendum in which the farmers and producers of flue-cured tobacco shall vote upon the question of

whether or not assessments under this Article shall be continued for the next ensuing three years. If the referendum is carried as provided in this Article, then assessments may be levied and collected as provided in this Article. (1959, c. 309, s. 13.)

§ 106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporoted. — The treasurer of Tobacco Associates, Incorporated shall, within 30 days after the end of any fiscal year, file with the State Auditor a financial statement as of the end of the fiscal year and a detailed statement of operations for the year ended. Further a condensed statement of the financial condition and operating expenses for said fiscal year shall be published in a newspaper of general circulation, if one exists, in each county from which assessments are collected. (1959, c. 309, s. 14.)

§ 106-568.32. Levy of assessment for 1959, 1960 and 1961 authorized. — The board of directors of Tobacco Associates, Incorporated, by a vote (as provided in G.S. 106-568.27 above) is hereby authorized to levy an assessment for the years 1959, 1960 and 1961 on all the flue-cured tobacco acreage in the State of North Carolina in an amount for each said year, as may be determined by said board, up to but not in excess of one dollar ($1.00) per acre per year in accordance with and pursuant to a referendum and vote of North Carolina flue-cured tobacco growers held in December, 1958; said assessment to be levied and collected just as though said referendum had been held after the adoption of this Article, provided that all of the requirements of this Article as to the determination of the amount of the assessment and the collection of the assessment are complied with and provided further that all conditions of this Article as to refund upon demand shall be applicable: Provided further that such assessments for the years 1959, 1960 and 1961 shall be in lieu of the amount of ten cents (10¢) per acre, authorized under the provisions of Chapter 511 of the Session Laws of 1947. (1959, c. 309, s. 15.)

§ 106-568.33. Effect of Article on prior acts. — Insofar as the provisions of this Article are different from and in conflict with the provisions of Chapter 511, Session Laws of 1947 and Chapter 63, Session Laws of 1951, to the extent of such conflict the provisions of this Article shall be applicable and shall supersede and prevail over the provisions of said former acts and all provisions of this Article shall be in full effect. So long as assessments are made under this Article, no assessment shall be made and collected under the provisions of Chapter 511, Session Laws of 1947, as amended. (1959, c. 309, s. 16.)

§ 106-568.34. Alternate method for levy of assessment. — At any time when it may be found by the board of directors of Tobacco Associates, that it is not reasonably feasible to base the authorization of an assessment or the making of an assessment or the collection of an assessment on a "per-acre" unit, then the board of directors of Tobacco Associates, 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 use a reasonably corresponding "tobacco poundage" unit as the basis for such authorization or making or collecting an assessment; provided, that no assessment shall exceed five cents (5¢) per 100 pounds of the effective farm marketing quota of a member. (1973, c. 81.)

§ 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 or 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. 179, s. 16.

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

ARTICLE 51A.

North Carolina Antifreeze Law of 1975.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 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. 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 dicontinued; 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 regulations 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.)

§ 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 52.

Agricultural Development.

§ 106-580. Short title. — This Article may be cited as the "Agricultural Development Act." (1959, c. 1177, s. 1.)

§ 106-581. Intent and purpose. — It is hereby declared to be the intent and purpose of this Article to provide for a plan of assistance to the farmers and other citizens of this State in increasing agricultural income by making available to the various counties of the State the full resources of the Agricultural Extension Service, and other facilities, within the said counties, by means of the Farm and Home Development Program and the Rural Development Program as authorized by Title 7, United States Code, and other existing agricultural agencies. (1959, c. 1177, s. 2.)

§ 106-582. Counties authorized to utilize facilities to promote programs. — The several counties of this State are hereby authorized to utilize the facilities of existing extension and other agricultural advisory committees for the purpose of installing and promoting the Farm and Home Development Program and/or the Rural Development Program, or other program within the purview of this Article, in the said counties; or, the several counties may, within their discretion, with the cooperation of the Agricultural Extension Service, create such new additional committees as may be needed for this purpose. (1959, c. 1177, s. 3.)

§ 106-583. Policy of State; cooperation of departments and agencies with Agricultural Extension Service. — It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity. For the attainment of these objectives the North Carolina Department of Agriculture, the School of Agriculture of North Carolina College and each and every other department and agency of the State of North Carolina is hereby empowered to cooperate with the Agricultural Extension Service and the committees authorized by this Article to provide: Development of new and improved methods of production, marketing, distribution, processing and utilization of plant and animal commodities at all stages from the original producer through to the ultimate consumer; development of present, new, and extended uses and markets for agricultural commodities and by-products as food or in commerce, manufacture or trade; introduction and breeding of new and useful agricultural crops, plants and animals, particularly those plants and crops which may be adapted to utilization in chemical and manufacturing industries; research, counsel and advice on new and more profitable uses of our resources of agricultural manpower, soils, plants, animals and equipment than those to which they are now devoted; methods of conservation, development, and use of land, forest, and water resources for agricultural purposes; guidance in the design, development, and more efficient and satisfactory use of farm buildings, farm homes, farm machinery, including the application of electricity, water and other forms of power; techniques relating to the diversification of farm enterprises, both as to the type of commodities produced, and as to the types of operations performed, on the individual farm; and assistance in appraising opportunities for making fuller use of the natural, human and community resources in the various counties of this State to the end that the income and level of living of rural people be increased. (1959, c. 1177, s. 4.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see § 116-2.

§ 106-584. Maximum use of existing research facilities. — In effectuating the purposes of this Article, maximum use may be made of existing research facilities owned or controlled by the State of North Carolina or by the federal government and of the facilities of the State and federal extension services. (1959, c. 1177, s. 5.)

§ 106-585. Appropriations by counties; funds made available by Congress. — The several counties of this State are hereby authorized to make such appropriations and expend such funds as shall be necessary to defray any part of the expenses of the programs authorized by this Article, including the salaries of the extension agents, special agents and other necessary personnel, and any funds made available by the Congress of the United States for this purpose may be accepted and used therefor. (1959, c. 1177, s. 6.)

§ 106-586. Authority granted by Article supplementary. — The authority granted by this Article is in addition to that granted to the Extension Service by the Congress of the United States and in no way infringes upon the administrative authority of the director of the Extension Service or the existing policies of the Extension Service. (1959, c. 1177, s. 7.)

§ 106-587. Local appropriations. — Each county and city in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1959, c. 1177, s. 8; 1973, c. 803, s. 10.)

§§ 106-588 to 106-600: Reserved for future codification purposes.

ARTICLE 53.

Grain Dealers.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 106-601. Definitions. — (a) "Cash buyer" means any grain dealer who pays the producer, or his representative at the time of obtaining title, possession or control of grain, the full agreed price of such grain in coin or currency, lawful money of the United States, certified checks, cashier's checks or drafts issued by a bank.

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

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

(d) "Grain" as used herein shall be construed to include, but not by way of limitation, corn, wheat, rye, oats, sorghum, barley, mixed grain and soybeans.

(e) "Grain dealer" means 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 of a North Carolina producer. The term "grain dealer" shall exclude producers or groups of producers buying grain for consumption on their farms.

(f) "Person" means an individual, partnership, corporation, association, syndicate or other legal entity.

(g) "Producer" means the owner, tenant or operator of land in this State who has an interest in and receives all or any part of the proceeds from the sale of the grain produced thereon. (1973, c. 665, s. 1.)

A Person Who Hauls Grain of a Producer without a Transfer of Title of the Grain Is Not Required to Be Licensed under This Article. — See opinion of Attorney General to Mr. James A. Graham, Commissioner of Agriculture, 43 N.C.A.G. 404 (1974).

§ 106-602. License required. — No person shall act or hold himself out as a grain dealer without first having obtained a license as herein provided. (1973, c. 665, s. 2.)

§ 106-603. Application for license or renewal thereof. — Every grain dealer before transacting business within the State of North Carolina shall on or before July 1, 1974, and annually on or before June 15 of each year thereafter, file a written application for a license or for the renewal of a license with the Commissioner. The application shall be on a form furnished by the Commissioner and shall contain the following information:

(1) The name and address of the applicant and that of its local agent or agents, if any, and the location of its principal place of business within this State.

(2) The kinds of grain the applicant proposes to handle.

(3) The type of grain business proposed to be conducted. (1973, c. 665, s. 3.)

§ 106-604. License fee; bond required; exemption. — All applications shall be accompanied by an initial or renewal license fee of twenty-five dollars ($25.00) plus twenty dollars ($20.00) per certificate or decal for each separate buying station or truck and a good and sufficient bond in the amount of ten thousand dollars ($10,000) to satisfy the initial license application. A fee of one dollar ($1.00) shall be charged for each duplicate license, certificate or decal. "Cash buyers" upon written request to the Commissioner showing proof satisfactory to the Commissioner that the person is a "cash buyer" under this Article shall be exempted from bonding requirements hereunder. The exemption shall be granted within 20 days of the receipt of the exemption request or unless the Commissioner requests the dealer to provide additional necessary information or unless the request is denied. (1973, c. 665, s. 4.)

§ 106-605. Execution, terms and form of bond; action on bond; investigation of complaints. — Such bond shall be made payable to the State of North Carolina with the Commissioner as trustee and shall be conditioned upon the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this Article and shall be for the use and benefit of any producer from whom the grain dealer may purchase or store grain and who is not paid by such grain dealer, and shall not be canceled during the period for which the license is issued except upon 30 days' notice in writing to the Department. The liability of the surety of any bond required by the provisions of this Article shall not accumulate for each successive license period and the aggregate liability of the surety shall not exceed the face amount of the bond. Any producer claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action in the superior court of the county of residence of the producer therefor upon the bond within 120 days of the date of delivery of such grain to the dealer. The producer may notify the Commissioner in writing, by certified mail when possible, of such failure or refusal within the 120-day period unless contracted otherwise, or 10 days thereafter. In the event the Commissioner receives written complaint from an alleged injured producer of nonpayment, fraud, deceit or negligence of a dealer,

the Commissioner may investigate such complaint and make recommendations to the surety company relative to the culpability or nonculpability of the dealer and the extent thereof. (1973, c. 665, s. 5.)

§ 106-606. Posting of license; decal on truck, etc. — The grain dealer license shall be posted in a conspicuous place in the place of business. In the case of a licensee operating a truck or tractor-trailer unit, the licensee is required to have a decal that the license is in effect and that a bond has been filed, such decal to be carried in each truck or tractor-trailer unit used in connection with the purchase of grain from producers. (1973, c. 665, s. 6.)

§ 106-607. Renewal of license. — Licenses shall be renewed upon application and payment of renewal fees on or before the fifteenth day of June following the date of expiration of any license hereunder issued. Applications received after June 15 of any year shall be subject to a late filing fee of ten dollars ($10.00) in addition to other applicable fees. (1973, c. 665, s. 7.)

§ 106-608. Disposition of fees. — All fees payable under this Article shall be collected by the North Carolina Department of Agriculture for the administration of this Article. (1973, c. 665, s. 8.)

§ 106-609. Records to be kept by dealers. — It shall be the duty of every person doing business as a grain dealer in this State to keep records of grain transactions for reasonable periods of time and in accordance with good business practices. (1973, c. 665, s. 9.)

§ 106-610. Grounds for refusal, suspension or revocation of license. — The Commissioner may refuse to grant or renew license, may suspend or may revoke any license upon a showing by substantial and competent evidence that:

(1) The dealer has suffered a final money judgment to be entered against him and such judgment remains unsatisfied; or

(2) The dealer has failed to promptly and properly account and pay for grain; or

(3) The dealer has failed to keep and maintain business records of his grain transactions as required herein; or

(4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer; or

(5) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture such assessments as have been approved by the producers and are required to be collected under the provisions of Article 50 of Chapter 106 of the General Statutes; or

(6) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral turpitude. (1973, c. 665, s. 10.)

§ 106-611. Procedure for refusal, suspension or revocation of license. — Before the Commissioner or his duly authorized representative shall refuse an initial or renewal license or revoke a license, he shall give at least 10 days' actual notice or notice by registered mail to the applicant or licensee of the time and place of hearing. At such hearing, the applicant or licensee shall be privileged to appear in person, or with counsel and to produce witnesses.

At the time and place fixed, the Commissioner or his designated representative shall proceed to hear the matter and any charges made and both the applicant or licensee and any complainant shall be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence and arguments as may be pertinent to the matter or charges or to any defense thereto. The Commissioner or his designated representative may continue such hearings from time to time. The hearing shall be reduced to writing.

The Commissioner is authorized to issue subpoenas and to bring before him or his designated representative any person or persons in this State and to take testimony either orally or by deposition or by exhibit with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings and civil cases in the superior courts of this State.

The Commissioner is authorized to issue subpoenas on any or all records relating to a grain dealer's business. The Commissioner or his designee may administer oaths to witnesses at any hearing that the Department is authorized by law to conduct. If the Commissioner or his designee shall find the applicant or licensee guilty of any act provided in G.S. 106-610, the Commissioner may refuse, suspend or revoke such license and shall give immediate notice to the applicant or licensee.

No suspension shall be for a longer period than one year.

No person whose license has been revoked shall be eligible to receive another license until at least two years have elapsed from the date of the order of revocation, or if appealed, two years from the final judgment sustaining such revocation.

Any person aggrieved by an order denying, suspending or revoking a license may appeal to the Superior Court of Wake County and the procedure for such appeal shall be exclusively governed by the provisions of Chapter 150A of the General Statutes. (1973, c. 611, s. 11; c. 1331, s. 3.)

§ 106-612. Commissioner's authority to investigate. — In furtherance of any such investigation, inspection or hearing, the Commissioner or his duly authorized agent shall have full authority to make any and all necessary investigations relative to the complaint or matter being investigated; and they shall have free and unimpeded access during normal business hours to all buildings, yards, warehouses, storage and transportation facilities in which grain is kept, stored, handled, or transported, or where records of grain transactions are kept. (1973, c. 665, s. 12.)

§ 106-613. Rules and regulations. — The Board of Agriculture may adopt such rules and regulations as may be necessary to carry out the administration and enforcement of this Article. (1973, c. 665, s. 13.)

§ 106-614. Violation a misdemeanor. — Any person who violates any provision of this Article or any rule or regulation of the Board of Agriculture promulgated hereunder shall be guilty of a misdemeanor and upon conviction thereof fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned for not more than 60 days, or both fined and imprisoned. In case of a continuing violation or violations, each day and each violation occurring constitutes a separate and distinct offense. (1973, c. 665, s. 14.)

§ 106-615. Operation without license unlawful; injunction for violation. — It shall be unlawful for any person to be a grain dealer without securing a license as herein provided. In addition to the criminal penalties provided for herein, the Commissioner of Agriculture may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article. (1973, c. 665, s. 15.)

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

ARTICLE 54.

Adulteration of Grains.

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstitued, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 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 substances 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.)

§§ 106-629 to 106-633: Reserved for future codification purposes.

ARTICLE 55.

North Carolina Bee and Honey Act of 1977.

§ 106-634. Declaration of policy. — The General Assembly hereby declares that it is in the public interest to promote and protect the bee and honey industry in North Carolina and to authorize the Commissioner of Agriculture and the Board of Agriculture to perform services and conduct activities to promote, improve, and enhance the bee and honey industry in North Carolina particularly relative to small beekeepers; to regulate all bees of the superfamily *Apoidea* in any stage of development; the causal agents of their disease or disorders, and their pests; to protect the bee and honey industry in North Carolina from bee diseases and disorders and to provide regulatory services in the areas of pollination of plants, honeybee poisonings, thefts, bee management and marketing. (1977, c. 238, s. 1.)

Editor's Note. — Session Laws 1977, c. 238, s. 12, provides: "The current bee and honey procedures of the North Carolina Department of Agriculture shall remain in force until the Board adopts procedures under the authority of this act."

§ 106-635. Definitions. — As used in this Article:

(1) The term "apiary" means bees, comb, hives, appliances, or colonies, wherever they are kept, located, or found.

(2) The term "bee(s)" means insects of the superfamily *Apoidea*; in particular, the honeybees, *Apis mellifera* (L). It includes all life stages of such insects, their genetic material, and dead remains.

(3) The term "beeyard" means a location or site where bees are located in hives.

(4) The term "Board" means the North Carolina Board of Agriculture.

(5) The term "Brazilian or African bee" means bees of the subspecies *Apis mellifera Adansonii* and their progeny.

(6) The term "colony" means one hive and its contents, including bees, comb, and appliances.

(7) The term "comb" includes all materials which are normally deposited into hives by bees. It does not include extracted honey or royal jelly, trapped pollen, and processed beeswax.

(8) The term "commercial beekeeper" means a beekeeper who owns or operates 200 or more colonies of bees, or a beekeeper who moves bees across state lines.

(9) The term "Commissioner" means the North Carolina Commissioner of Agriculture or his designated agents.

(10) The term "Department" means the North Carolina Department of Agriculture.

(11) The term "disease" means any infectious disease, parasite, or pest that detrimentally affects bees.

(12) The term "disorder" means any disease, poisoning, pest, parasite, or predator damage, toxic substance injury, or undesirable trait or genetic strain of the bee that detrimentally affects bees or the bee and honey industry.

(13) The term "exposed" means having been in circumstances where the possibility of infection or damage by a disease or disorder occurred. Bees in an apiary where disease or disorder is present or where there has been an exchange of equipment with a diseased apiary may be considered exposed.

(14) The term "health certificate" means a statement issued by the State Entomologist certifying that bees or regulated articles are apparently free of disease or disorder based on an inspection or freedom from exposure to disease or disorder.

(15) The term "hive" means any receptacle or container, or part of receptacle or container, which is made or prepared for the use of bees, or which is inhabited by bees.

(16) The term "honey" means for the purpose of defining honey as a regulated article in the control of bee diseases or disorders, the natural food product made by the honeybees from the nectar of flowers, the saccharine exudation of plants, honeydew, sugar, corn syrup, or any other material along with any adulterants.

(17) The term "honeybees" means honey-producing insects of the genus *Apis*.

(18) The term "honeyflow" means the seasonal yielding of nectar by honey plants.

(19) The term "honey plants" means blooming plants from which bees gather nectar or pollen.

(20) The term "infested or infected" means showing symptoms of or having been exposed to the causal agent of a bee disease or disorder to such a degree that there is a possibility of the infected organisms or material transmitting the disease or disorder to other bees.

(21) The term "moveable frame hive" means any hive where the frames can be removed without damaging the comb.

(22) The term "permit" means an authorization to allow movement or other action involving bees or regulated articles.

(23) The term "regulated article" means any bees, bee equipment, comb, beeswax, honey, pollen, causal agents of disease, toxic substances, products of the hive, containers, and any other item regulated under this Article or pursuant regulations.

(24) The term "symptomless carrier" means to possess or bear a disease or disorder in a suppressed state having the potential for spreading the disease or disorder. (1977, c. 238, s. 2.)

§ 106-636. Powers and duties of Commissioner generally. — The Commissioner shall promote the bee and honey industry in North Carolina. The Commissioner may perform services, cooperate in research activities, conduct investigations, publish information and cooperate with the beekeeping industry to protect and improve beekeeping in North Carolina. He may work toward enhancing honey plants and improving honeybees. He may investigate thefts of honeybees, equipment or products; cooperate in preventative measures; and assist in prosecution of suspects. (1977, c. 238, s. 3.)

§ 106-637. Authority of Board to accept gifts, enter contracts, etc. — The Board is authorized to accept gifts, grants, or donations from any source for the purpose of promoting and protecting the bee and honey industry. The Board is authorized to issue grants or enter contracts or agreements for the furtherance of the purpose of this Article. (1977, c. 238, s. 4.)

§ 106-638. Authority of Board to adopt regulations, standards, etc. — The Board may adopt regulations and set procedures for the purpose of carrying out the provisions of this Article. The Board may adopt minimum standards for colony strength and disease tolerance levels for hives rented for pollination of crops, and the Commissioner shall certify hives meeting those standards. The Board may adopt regulations to regulate or prohibit entrance into North Carolina of bees or regulated articles to protect the bee and honey industry from bee diseases, disorders, overcrowding of honey pasture, or other encroachments deemed by the Board not to be in the best interest of the beekeepers of North Carolina. The Board may adopt regulations relating to, but shall not be limited to, providing for inspection of bees; and surveying and developing regulations to control, eradicate, abate, prevent exposure to, or prevent the introduction of or movement into or within North Carolina of bee diseases, disorders, pests or enemies of bees; or products that are a threat to beekeeping in North Carolina. The diseases, disorders, and products regulated shall include, but not be confined to bee diseases, poisons, bee pests, pollen, causal agents of disease, bee parasites and predators and toxic substances. The Board may regulate undesirable species or strains of bees including but not limited to Brazilian or African strains of bees. Regulations may include articles, exposed to infection or infestation, bees, honey, honeycomb, beeswax, beeswax refuse, royal jelly, containers, and beekeeping equipment to include sale, exposure and shipment of said and like items. The Board may adopt regulations governing beeyards or sites of commercial beekeepers. The Board is authorized to adopt regulations and set fees for extra or special inspections, issuance of certificates, permits, registrations, and regulatory activities. (1977, c. 238, s. 5.)

§ 106-639. Regulations for control and prevention of diseases and disorders. — The Board may adopt regulations and procedures for the disposition of bees infected or infested with diseases or disorders, beekeeping equipment, and other regulated articles kept or moved in violation of this Article and pursuant regulations. Such regulations may authorize the Commissioner to quarantine, destroy, confiscate, or otherwise dispose of, eradicate, establish cleanup areas, and require owners to disinfect, fumigate, treat with drugs, or destroy bees or articles at their own expense or to take measures to eradicate bee diseases or disorders.

The Board shall have authority to either allow, require, or forbid use of drugs in the control of bee diseases or disorders, and may define as infested or infected symptomless carriers of a disease or disorder, declare bees that have been treated with disease-masking drugs to be infested or infected, and consider bees

or articles which have been exposed to a disease or disorder to be infected or infested.

The Board may also adopt regulations governing beeswax salvage operations and honey house sanitation for disease prevention. (1977, c. 238, s. 6.)

§ 106-640. Authority of Commissioner to protect industry from diseases and disorders, etc. — The Commissioner shall protect the bee and honey industry from diseases and disorders of the honeybee (*Apis mellifera*) and other insects in the superfamily (*Apoidea*) and shall provide services and enforce provisions of this Article and pursuant regulations. The Commissioner may adopt regulations for prohibiting or regulating the movement of bees and regulated articles into and from quarantine or cleanup areas and enforce procedures for control and cleanup of diseases or disorders in such areas.

The Commissioner is authorized to establish postentry quarantines and issue hold orders for inspection of bees or regulated articles imported into North Carolina. (1977, c. 238, s. 7.)

§ 106-641. Giving false information to Commissioner; hives; certificates, permits, etc. — It is unlawful to knowingly give false information to the Commissioner concerning diseased bees or bees exposed to disease, their treatment, or disposition.

The Commissioner may require that bees be kept in moveable frame hives and be maintained in an inspectable condition or in other hives where an inspection for disease or disorder can be readily made.

The Board may adopt regulations for issuance of health certificates, moving permits, and the registration of honeybees and may require marking or identification of honeybee colonies or apiaries. (1977, c. 238, s. 8.)

§ 106-642. Emergency action by Commissioner. — The Commissioner may take emergency action with respect to Board authority in the provisions of this Article if needed to protect the bee and honey industry in North Carolina. Such action shall remain in force until rescinded by the Commissioner or acted on by the Board. (1977, c. 238, s. 9.)

§ 106-643. Designation of persons to administer Article; inspections, etc. — The Commissioner shall have the authority to designate such employees of the Department or persons collaborating with the Department as may seem expedient to carry out the duties and exercise the powers provided by this Article. The Commissioner is authorized to survey or inspect premises for the presence of bees or other regulated articles, inspect colonies for bee diseases and disorders, and otherwise enforce the provisions of this Article and pursuant regulations. The Commissioner or his designated agent shall have authority to inspect vehicles or other means of transportation and their cargo suspected of carrying bees or regulated articles, and enter upon any premises to inspect any bees or regulated articles to determine the presence or absence of diseases or disorders.

Such inspections and other activities may be conducted with the permission of the owner or person in charge. If permission is denied the Commissioner or his designated agent, such inspections and other activities may be conducted in a reasonable manner, with a warrant, with respect to any premises or vehicles. Such warrant shall be issued pursuant to Article 4A of Chapter 15. A superior court or district court judge may issue confiscation orders on any bees or articles for which confiscation is authorized in this Article or pursuant regulations. (1977, c. 238, s. 10.)

§ 106-644. Penalties. — If anyone shall attempt to prevent inspection as provided in this Article or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaging in the performance of his

duties under this Article, or shall violate any provisions of this Article or any regulation of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) or imprisoned for not more than 30 days, for each offense. Each day's violation shall constitute a separate offense. (1977, c. 238, s. 11.)

§§ 106-645 to 106-654: Reserved for future codification purposes.

ARTICLE 56.

North Carolina Commercial Fertilizer Law.

§ 106-655. Short title. — This Article shall be known as the "North Carolina Commercial Fertilizer Law." (1977, c. 303, s. 1.)

§ 106-656. Purpose of Article. — The purpose of this Article shall be to assure the manufacturer, distributor, and consumer of the correct quality and quantity of all commercial fertilizer sold in this State, and to assure the safe handling of fluid fertilizers. (1977, c. 303, s. 2.)

§ 106-657. Definitions. — When used in this Article:

(1) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale, and may include a number, trademark, or other designation.

(2) The term "bulk fertilizer" means a commercial fertilizer distributed in non-package form.

(3) The term "commercial fertilizer" includes both fluid and dry mixed fertilizer and/or fertilizer materials.

(4) The term "contractor" means any person, firm, corporation, wholesaler, retailer, distributor or any other person, who for hire or reward applies commercial fertilizer to the soil or crop of a consumer; provided, that this shall not apply to any consumer applying commercial fertilizer to only the land or crop that he owns or to which he otherwise holds rights, for the production of his own crops.

(5) The term "distributor" means any person who offers for sale, sells, barters, or otherwise supplies mixed fertilizer or fertilizer materials.

(6) The term "fertilizer material" means any substance containing either nitrogen, phosphorus, potassium, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of unmanipulated animal and vegetable manures and mulches for which no plant food content is claimed.

(7) The term "fluid fertilizer" means a nonsolid commercial fertilizer.

(8) The term "fortified mulch" means substances composed primarily of plant remains or mixtures of such substances to which plant food has been added and for which plant food is claimed.

In "fortified mulches" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed and the guarantee stated in multiples of quarter (.25) percentages; provided, however, that such percentages shall not exceed one percent (1%), respectively, subject to the same limits and tolerances set forth in this Chapter.

(9) The term "grade" means the percentage of total nitrogen, available phosphoric acid (as P205) and soluble potash (as K20) stated in the order given in this subdivision, and, when applied to mixed fertilizers, shall be in whole numbers only for all packages larger than 16 ounces.

(10) The term "manipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, artificially drying, grinding and other means.

In "manipulated manures" the minimum percentages of total nitrogen, available phosphoric acid (as P205) and soluble potash (as K20) are to be guaranteed, and the guarantee stated in multiples of half (.50) percentages. Additions of plant food shall be limited to one-half (.50) percent each of nitrogen, phosphorus and potash.

(11) The term "manufacturer" means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers; and the term "manufacture" means preparing, mixing, or combining fertilizer materials chemically or physically.

(12) The term "mixed fertilizers" means products resulting from the combination, mixture, or simultaneous application of two or more fertilizer materials for use in, or claimed to have value in promoting plant growth.

(13) The term "mulch" means substances composed primarily of plant remains or mixtures of such substances to which no plant food has been added and for which no plant food is claimed.

(14) The term "natural organic fertilizer" means material derived from either plant or animal products containing one or more elements (other than carbon, hydrogen and oxygen) which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. These materials shall not be mixed with synthetic materials, or changed in any physical or chemical manner from their initial state except by physical manipulations such as drying, cooking, chopping, grinding, shredding or pelleting.

(15) The term "official sample" means any sample of commercial fertilizer taken by the Commissioner or his authorized agent according to the method prescribed in subsection (b) of G.S. 106-662.

(16) The term "organic fertilizer" means a material containing carbon and one or more elements other than hydrogen and oxygen essential for plant growth.

(17) The term "percent" or "percentage" means the percentage by weight.

(18) The term "person" includes individuals, partnerships, associations, firms, agencies, and corporations, or other legal entity.

(19) The term "retailer" means any person who sells or delivers fertilizer to a consumer.

(20) The term "sale" means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditional or otherwise for a consideration paid or to be paid, and this shall include any of said transactions whereby title or ownership is to pass and shall further mean and include any bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid in which possession of said property passes to the bailee, borrower, lessee, or licensee.

(21) The term "sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.

(22) The term "specialty fertilizer" means any fertilizer distributed primarily for use on noncommercial crops such as gardens, lawns, shrubs, flowers, golf courses, cemeteries, nurseries, etc., and may include fertilizers used for research or experimental purposes.

(23) The term "ton" means a net ton of two thousand pounds avoirdupois.

(24) The term "unmanipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.
(25) The term "wholesaler" shall mean any person who sells to any other person for the purpose of resale, and who also may sell to a consumer.
(26) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2; 1955, c. 354, s. 1; 1959, c. 706, ss. 1, 2; 1961, c. 66, ss. 1, 2; 1977, c. 303, s. 3.)

§ 106-658. Enforcing official. — This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina, or his authorized agent, hereinafter referred to as the "Commissioner." (1947, c. 1086, s. 2; 1977, c. 303, s. 4.)

§ 106-659. Minimum plant food content. — Superphosphate containing less than eighteen percent (18%) available phosphoric acid, or any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble potash totals less than twenty percent (20%) may not 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 10 pounds or less, but such packages are not exempt from any other requirements of this Article. Packages of 16 fluid ounces or less when in liquid form, or 16 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, 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; 1977, c. 303, s. 5.)

§ 106-660. Registration of brands; licensing of manufacturers; sale of fluid fertilizer; registration of distributors, etc.; regulation of fluid fertilizer distributing plants. — (a) Each brand of commercial fertilizer, manipulated manure and fortified mulch shall be registered by the person whose name appears upon the label before being offered for sale, sold, or distributed in this State, with the exception of those brands clearly produced for experimental and demonstration purposes only. The application for registration shall be submitted in duplicate to the Commissioner on forms furnished by the Commissioner, and shall be accompanied by a remittance of two dollars ($2.00) per brand and grade as a registration fee for packages over five pounds. Registration fees for packages of five pounds or less shall be twenty-five dollars ($25.00). Upon approval by the Commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of each year. The application shall include the following information:
(1) The name and address of the person guaranteeing registration.
(2) The brand.
(3) The grade.
(4) The guaranteed analysis showing the percentage of plant food in the following order and form; provided, that the Commissioner of Agriculture may vary this order and form for packages of 25 pounds or less.

Type Fertilizer	Total Nitrogen	Nitrate Nitrogen	Water Insoluble Nitrogen	Available Phosphoric Acid
General Crop	Required	Optional	Optional	Required
Field Fertilizer for Tobacco	Required	Optional	Optional	Required

Type Fertilizer	Total Nitrogen	Nitrate Nitrogen	Water Insoluble Nitrogen	Available Phosphoric Acid
Tobacco Plant Bed	Required	Optional	Optional	Required
Tobacco Top Dressers	Required	Optional	Optional	Required
Materials	Required	Optional	Optional	Required
Manipulated Manures	Required	Optional	Optional	Required
Organic Fertilizer	Required	Optional	Required*	Required
Fortified Mulches	Required	Optional	Optional	Required
Specialty (Other than Organic)	Required	Optional	Optional	Required

*(Minimum 15% of total)

Type Fertilizer	Soluble Potash	Chlorine (Maximum)	Acidity or Basicity
General Crop	Required	Optional	Optional
Field Fertilizer for Tobacco	Required	Required	Optional
Tobacco Plant Bed	Required	Required	Optional
Tobacco Top Dressers	Required	Required	Optional
Materials	Required	Optional	Optional
Manipulated Manures	Required	Optional	Optional
Organic Fertilizer	Required	Optional	Optional
Fortified Mulches	Required	Optional	Optional
Specialty (Other than Organic)	Required	Optional	Optional

a. If acid forming or nonacid forming potential is guaranteed, the potential acidity or basicity must be expressed as equivalent pounds per ton of calcium carbonate.

b. All natural organic fertilizer materials including manipulated manures, sewage sludge, tankage and any other natural organic product that does not come under the definition of mixed fertilizer shall be registered, labeled and sold by the name of such natural organic fertilizer materials only.

c. No product may be registered, sold, offered for sale or distributed as an organic fertilizer when less than fifteen percent (15%) of the total nitrogen is water insoluble nitrogen.

d. In the case of bone, tankage, and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid and the degree of fineness.

(5) The sources from which the nitrogen, phosphoric acid, and potash are derived.

(6) Magnesium (Mg), calcium (Ca), and sulfur (S) may be claimed as secondary plant food in all commercial fertilizers, but only in the elemental form. When one or more of these are claimed the minimum percentage of total magnesium (Mg), total calcium (Ca), and total sulfur (S), as applicable, shall be guaranteed.

(7) Boron may be claimed as an ingredient of mixed fertilizers. If claimed, it shall be guaranteed in terms of percent boron (B). The guarantee will be considered both a minimum and a maximum guarantee. When the boron content is .03% or more, the analysis guarantee shall be on a separate tag as prescribed by the Commissioner.

(8) Additional plant food elements, compounds, or classes of compounds, determinable by chemical control methods, may be guaranteed only by permission of the Commissioner who may seek the advice of the director of the experiment station. When any such additional plant food elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Commissioner. The Commissioner shall also fix penalties for failure to fulfill such guarantees.

(9) In no case, except in the case of unacidulated mineral phosphates and/or basic slag unmixed with other materials shall both the terms "total phosphoric acid" and "available phosphoric acid" be used in the same statement of analysis.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this Article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the Commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the Commissioner of such change 30 days in advance of such registration. If the Commissioner, after consultation with the director of the agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the Commissioner shall give due publicity to said changes through the Agricultural Review or by such other means as he may deem advisable.

(d) Any person wishing to become a fertilizer manufacturer, as defined in this Article shall before engaging in such business secure a license from the Commissioner of Agriculture. Such person shall make application for such license on forms to be furnished by the Commissioner submitting such information as to his proposed operation as the Commissioner may prescribe. Such license shall be renewable annually on the first day of July. Such license

may be revoked for a violation of any provisions of this Article, or of any rule or regulation adopted by the Board of Agriculture.

(e) When fluid fertilizer is offered for sale or sold in this State, the method of transfer of custody shall be by weight expressed in pounds, and shall be invoiced in such a manner as to show the name of the seller, the name of the purchaser, the date of sale, the grade, and the net weight; provided, however, that fluid fertilizer may be measured in gallons of 231 cubic inches and its equivalent expressed in pounds, with a formula for converting from gallons to pounds shown on the invoice.

(f) Any person before engaging in the business of handling, storing or distributing fluid fertilizer in this State shall register with the Commissioner and shall re-register on or before July 1 of each year thereafter so long as he shall engage in said business. The application for registration shall be submitted in duplicate on forms furnished by the Commissioner of Agriculture.

(g) Before any wholesale or retail fluid fertilizer distributing plant shall be built in this State, a general layout of such plant shall be submitted in duplicate and approved by the Commissioner. In order that such a layout may be approved it must conform to the minimum standards and rules and regulations, relating to safe handling, storage, distribution and/or application adopted by the Board of Agriculture. All storage tanks, transfer or transport containers, applicator containers, and attached equipment shall conform to the minimum standards adopted by the Board of Agriculture. It shall be the duty of the contractors referred to in G.S. 106-657(4) to obtain, maintain and operate in accordance with the minimum standards and rules and regulations adopted by the Board of Agriculture, any and all equipment which he may use in the application of fluid fertilizer. It shall be the duty of the Commissioner to inspect and ascertain whether or not the provisions of this section are complied with. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6; 1959, c. 706, ss. 3-5; 1961, c. 66, ss. 3, 4; 1973, c. 611, ss. 1-4; 1977, c. 303, s. 6.)

§ 106-661. Labeling. — (a) Any commercial fertilizer offered for sale, sold, or distributed in this State in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by G.S. 106-660(a), with the exception of subdivision (5), either (i) on tags to be affixed to the end of the package or (ii) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the containers shall not be less than two inches in height for containers of 100 pounds or more; not less than one inch for containers of 50 to 99 pounds; and not less than ½ inch for packages of 25 to 49 pounds. On packages of less than 25 pounds, the grade must appear in numerals at least one half as large as the letters in the brand name. In case of fertilizers sold in containers on which the brand name or other designations of the distributor do not appear, the grade must appear in a manner prescribed by the Commissioner on tags attached to the container.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by G.S. 106-660(a), with the exception of subdivision (5), shall accompany delivery and be supplied to the purchaser.

(c) If mixed fertilizer is sold or intended to be sold in bags weighing more than 100 pounds, each bag must have a tag attached thereto, of a type approved by the Commissioner, showing the grade of the fertilizer contained therein. Such tag must be attached on the end of each bag, approximately at the center of the sewed end of the bag: Provided, that in lieu of such tag the grade of the fertilizer may be printed on the end of the bag in readily legible numerals.

(d) All commercial 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; 1977, c. 303, s. 7.)

Editor's Note. — The cases cited below were decided under prior law.

Warranty of Contents. — Manufacturers and vendors of commercial fertilizers impliedly warrant that they contain the ingredients specified on the tags placed on the bags, according to the requirements of the statute. Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

Compliance with Statute Warranted. — When plaintiffs, as manufacturers, dealers or agents, sold to defendant commercial fertilizers, they must be held to have warranted that they had complied with the statute, and that the articles delivered, as commercial fertilizers were truthfully branded as required by the statute. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925).

Note for Purchase Price of Fertilizers Not Complying with Statute. — If the contents of the bags or packages delivered to defendant by plaintiffs were not, in fact commercial fertilizers, of the analysis guaranteed on each bag or package, as required, there was no consideration for the note given for the purchase price of the articles bought by defendant, and plaintiffs are not entitled to recover on said note. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925).

The rule of caveat emptor, as applied at common law in the sale of articles of personal property, is not applicable to the sale of commercial fertilizers in this State. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925); Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

The burden of proof is upon the manufacturer to show, in an action against a purchaser for the purchase price, that the goods were at least merchantable, and that the ingredients used in their manufacture were in accordance with the specifications upon the tags placed on the bags under the requirements of the statute. Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

A waiver by the purchaser of any demand for damages on account of any deficiencies in the ingredients of fertilizers, except such as may be ascertained in the manner specified in the statute, is valid and enforceable. Armour Fertilizer Works v. Aiken, 175 N.C. 398, 95 S.E. 657 (1918).

§ 106-662. Sampling, inspection and testing. — (a) It shall be the duty of the Commissioner to sample, inspect, make analysis of, and test commercial fertilizers offered for sale, sold, or distributed within the State at such time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this Article. The Commissioner is authorized with permission or under court warrant to enter upon any public or private premises during regular business hours or at any time business is being conducted therein in order to have access to commercial fertilizers subject to the provisions of this Article and the rules and regulations thereto.

(b) The methods of sampling shall be as follows:

(1) For the purposes of analysis by the Commissioner and for comparison with the guarantee supplied to the Commissioner in accordance with G.S. 106-660 and 106-661, the Commissioner, shall take an official sample of not less than one pound from containers of commercial fertilizer. No sample shall be taken from less than five containers. Portions shall be taken from containers as shown in the following table:

5 to 10 containers	all containers
11 to 20 containers	10 containers
21 to 40 containers	15 containers
above 40 containers	20 containers

Ten cores from bulk lots or as specified by the Association of Official Analytical Chemists (A.O.A.C.).

(2) A core sampler shall be used that removes a core from a bag or other container in a horizontal position from a corner to the diagonal corner at the other end of the package, and the cores taken shall be mixed, and if necessary, shall be reduced after thoroughly mixing, to the

quantity of sample required. The composite sample taken from any lot of commercial fertilizer under the provisions of this subdivision shall be placed in a tight container and shall be forwarded to the Commissioner with proper identification marks.

(3) The Board of Agriculture may modify the provisions of this subsection to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling commercial fertilizers which shall have been adopted by the Association of Official Analytical Chemists or by the Association of American Plant Food Control Officials. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this Article in lieu of those prescribed in subdivisions (1) and (2) of this subsection.

(4) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise.

(5) The Commissioner shall refuse to analyze all samples except those taken under the provisions of this section and no sample, unless so taken, shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this Article.

(6) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of Agriculture, setting forth the analysis made by the chemist of the Department of Agriculture, of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence.

(c) The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Analytical Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis.

(d) The result of official analysis of any commercial fertilizer which has been found to be subject to penalty shall be forwarded by the Commissioner to the registrant at least 10 days before the report is submitted to the purchaser. If, during that period, no adequate evidence to the contrary is made available to the Commissioner, the report shall become official. Upon request the Commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

(e) Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed for available plant food, if taken in accordance with the following rules and regulations:

(1) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(2) The sample shall be drawn in the presence of the manufacturer, seller, or representative designated by either party together with two disinterested adult persons; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three

disinterested adult persons; provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture in taking samples and shall be drawn, mixed, and divided, as directed in subdivisions (1), (2), (3), and (4) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner.

(3) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the State, as those drawn by the Commissioner or any official inspector appointed by him as provided for in subsection (b) of this section.

(4) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this Article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section does not conform to the provisions of this Article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this State during such season, employed such ingredients as are prohibited by the provisions of this Article, or unless it shall appear to the Commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods or unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question, or a representative, agent or employee of the manufacturer, has violated any provisions of G.S. 106-663. (1947, c. 1086, s. 7; 1955, c. 354, s. 3; 1973, c. 1304, s. 1; 1977, c. 303, s. 8.)

Editor's Note. — The cases cited below were decided under prior law.

This section does not apply to actions for damages for breach of an express warranty of fitness of the fertilizer for the purposes for which it was warranted. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

When a litigant alleges that his losses are the result of false statements concerning fertilizer which constitute an express warranty of fitness, he is not required to comply with the provisions of this section. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

It is impossible for any farmer suffering damages from the breach of an express warranty of fitness to satisfy the requirements of this statute. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

But Does Apply to Action for Breach of Implied Warranty. — An action to recover damages for breach of implied warranty is in essence an action based on the inherent defects of the goods and is within the scope of this section. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

Section 25-2-315 does not repeal or limit the scope of subdivision (4) of subsection (e), since § 25-2-102 provides that the Uniform Commercial Code does not "impair or repeal any statute regulating sales to . . . farmers." Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

§ 106-663. False or misleading statements. — It shall be unlawful to make, in any manner whatsoever, any false or misleading statement or representation with regard to any commercial fertilizer offered for sale, sold, or distributed in this State, or to use any misleading or deceptive trademark or brand name in connection therewith. The Commissioner is hereby authorized to refuse the registration of any commercial fertilizer with respect to which this section is violated. (1947, c. 1086, s. 12; 1977, c. 303, s. 9.)

§ 106-664. Determination and publication of commercial values. — For the purpose of determining the commercial values to be applied under the provisions of G.S. 106-665, the Commissioner shall determine and publish annually the values per pound of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties. (1947, c. 1086, s. 9; 1977, c. 303, s. 10.)

§ 106-665. Plant food deficiency. — (a) The Commissioner, in determining for administrative purposes, whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subdivision (15) of G.S. 106-657, and as provided for in subsections (b), (c), and (d) of G.S. 106-662.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) For total nitrogen, available phosphoric acid, or available potash: A penalty of three times the value of the deficiency if such deficiency is in excess of the following investigational allowances.

Guarantee Percentage	*Total Nitrogen*	*Available Phosphoric Acid*	*Soluble Potash Percentage*
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

(2) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent (5%) (or 100 pounds of calcium carbonate equivalent per ton) from the guarantee, a penalty of fifty cents (50¢) per ton for each 50 pounds calcium carbonate equivalent, or fraction thereof in excess of the 100 pounds allowed, shall be assessed and paid as is prescribed in subsection (c) of this section.

(3) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than

0.5 of one percent, a penalty shall be assessed equal to ten percent (10%) of the value of the fertilizer for each additional 0.5 of one percent of excess or fraction thereof.

(4) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.15 of one percent on goods guaranteed up to and including five-tenths percent; 0.20 of one percent on goods guaranteed from five-tenths percent to one percent; 0.30 of one percent on goods guaranteed from one percent to two percent; 0.50 of one percent on goods guaranteed above two percent and up to and including five percent; and 1.00 percent on goods guaranteed over five percent.

(5) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.20 of one percent for goods guaranteed up to and including five-tenths percent; 0.25 of one percent for goods guaranteed from five-tenths to one percent; 0.30 of one percent for goods guaranteed from one to two percent; and 0.35 of one percent for goods guaranteed above two percent up to four percent. Tolerances for goods guaranteed above four percent shall be the same as for total nitrogen.

(6) Total magnesium: If the magnesium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.15 of one percent additional deficiency or fraction thereof.

(7) Total calcium: If the calcium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.35 of one percent additional deficiency or fraction thereof.

(8) Sulfur: If the sulfur content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of one dollar ($1.00) per ton for each 0.50 of one percent additional excess or fraction thereof, shall be assessed.

(9) Deficiencies or excesses in any other constituent or constituents covered under subdivisions (6) and (7), subsection (a), G.S. 106-660 which the registrant is required to or may guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner in fertilizer regulations.

(10) For micro-nutrients as are not specifically covered in this Article, a tolerance of twenty-five percent (25%) of the guarantee will be allowed for each element, not to exceed ½ unit (.5%) on guarantees up to 15 units or percent and not to exceed one unit (1%) on guarantees above 15 units or percent.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner; provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumer cannot be found, the amount of the penalty assessed shall be paid to the Commissioner who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4; 1977, c. 303, s. 11.)

§ 106-666. "Stop sale," etc., orders. — It shall be the duty of the Commissioner to issue and enforce a written or printed "stop sale, use, or

removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the Commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said commercial fertilizer is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18; 1955, c. 354, s. 5; 1977, c. 303, s. 12.)

§ 106-667. Seizure, condemnation and sale. — Any lot of commercial fertilizer not in compliance with the provisions of this Article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this Article and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State; provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this Article. (1947, c. 1086, s. 19; 1977, c. 303, s. 13.)

§ 106-668. Punishment for violations. — Each of the following offenses shall be a misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of misdemeanors:

(1) To manufacture, offer for sale, or sell in this State any mixed fertilizer or fertilizer materials containing any substance that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance with the effect of defrauding the purchaser.

(2) To offer for sale or to sell in this State for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(3) To make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this State, or to use any misleading or deceptive trademark or brand in connection therewith. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive and fraudulent.

The Commissioner is authorized to refuse registration for any commercial fertilizer with respect to which this section is violated.

(4) The filing with the Commissioner of any false statement of fact in connection with the registration under G.S. 106-660 of any commercial fertilizer.

(5) Forcibly obstructing the Commissioner or any official inspector authorized by the Commissioner in the lawful performance by him of his duties in the administration of this Article.

(6) Knowingly taking a false sample of commercial fertilizer for use under provisions of this Article; or knowingly submitting to the Commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any commercial fertilizer sold or offered for sale in this State for the purpose of deceiving or defrauding such other person.

(7) The fraudulent tampering with any lot of commercial fertilizer so that as a result thereof any sample of such commercial fertilizer taken and submitted for analysis under this Article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this Article, if done prior to such analysis and disposition of the sample under the direction of the Commissioner.

(8) The delivery to any person by the fertilizer chemist or his assistants or other employees of the Commissioner of a report that is willfully false and misleading on any analysis of commercial fertilizer made by the Department in connection with the administration of this Article.

(9) Selling or offering for sale in this State commercial fertilizer without marking the same as required by G.S. 106-661.

(10) Selling or offering for sale in this State commercial fertilizer containing less than the minimum content required by G.S. 106-659.

(11) Failure of any manufacturer, importer, jobber, agent, or dealer to have applied for and to have been issued a permit as required by G.S. 106-671 before selling, offering, or exposing for sale or distributing commercial fertilizers in this State.

(12) Failure of any manufacturer or contractor to procure a license under the provisions of G.S. 106-660(d) before beginning operations within the State. (1947, c. 1086, s. 20; 1959, c. 706, ss. 10, 11; 1977, c. 303, s. 14.)

§ 106-669. Cancellation or refusal of registration. — The Commissioner is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer upon proof that the registrant has been guilty of fraudulent or deceptive practices, or in the evasion or attempted evasion of the provisions of this Article or any rules or regulations promulgated thereunder. No registration shall be cancelled until the registrant has been given an opportunity for a hearing pursuant to the provisions of Article 3 of Chapter 150A of the General Statutes. (1947, c. 1086, s. 17; 1977, c. 303, s. 15.)

§ 106-670. Appeals from assessments and orders of Commissioner. — Nothing contained in this Article shall prevent any person from appealing to a court of competent jurisdiction from any assessment of penalty or other final order or ruling of the Commissioner or Board of Agriculture. (1947, c. 1086, s. 22; 1977, c. 303, s. 16.)

§ 106-671. Inspection fees; reporting system. — (a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture a charge of twenty-five cents (25¢) per ton on all commercial fertilizers other than packages of five pounds or less. Inspection fees shall be paid on all tonnage distributed into North Carolina to any person not having a valid reporting permit. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars ($25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of twenty-five cents (25¢) per ton on any amount in excess of one hundred tons as provided herein. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) Reporting System. — Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of

Agriculture an inspection fee of twenty-five cents (25¢) per ton. The Commissioner is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each registrant shall report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the last day of the month it is due, the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required. If the report is not filed and the inspection fee paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit. In order to guarantee faithful performance with the provisions of this subsection each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of one thousand dollars ($1,000) or securities acceptable to the Commissioner of a value of at least one thousand dollars ($1,000) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1947, c. 1086, s. 6; 1949, c. 637, s. 3; 1959, c. 706, ss. 6, 7; 1973, c. 611, s. 5; 1977, c. 303, s. 17.)

Editor's Note. — The cases cited below were decided under a prior law.

Action to Secure Tax Wrongfully Colleted. — The Board of Agriculture is a department of the State government, and an action against it to recover money alleged to have been wrongfully collected by it as a license tax cannot be maintained, the State not having given its consent to be sued in that respect. Lord & Polk Chem. Co. v. Board of Agriculture, 111 N.C. 135, 15 S.E. 1032 (1892).

Property Tax. — The statute will not be so construed as to relieve manufacturers of fertilizers or fertilizing material, paying this inspection tax, from the payment of property tax required by the Constitution. Pocomoke Guano Co. v. Biddle, 158 N.C. 212, 73 S.E. 996 (1912).

§ 106-672. Declaration of policy. — The General Assembly hereby finds and declares that it is in the public interest that the State regulate the activities of those persons engaged in the business of preparing, mixing, or manufacturing commercial fertilizers, in order to insure the manufacturer, distributor and consumer of the correct quantity and quality of all commercial fertilizer sold or offered for sale in this State. It shall therefore be the policy of this State to regulate the activities of those persons engaged in the business of preparing, mixing or manufacturing commercial fertilizer. (1977, c. 303, s. 18.)

§ 106-673. Authority of Board of Agriculture to make rules and regulations. — Because legislation with regard to commercial fertilizer sold or offered for sale in this State must be adopted [adapted] to complex conditions and standards involving numerous details with which the General Assembly cannot deal directly and in order to effectuate the purposes and policies of this Article, and in order to insure the manufacturer, distributor, and consumer of the correct quality and quantity of all commercial fertilizer sold or offered for sale in this State, the Board of Agriculture shall have the authority to make rules and regulations with respect to

(1) The maximum chlorine guarantee permitted for tobacco fertilizer;

(2) The maximum chlorine guarantee permitted in tobacco top dressers;
(3) Which grades of fertilizer may be branded top dressers;
(4) The labeling of the grade of fertilizer when such fertilizer is sold in plain or unbranded bags;
(5) The labeling requirements for all containers of liquid commercial fertilizer for direct application to the soil;
(6) The bag sizes which may be used in the sale of commercial fertilizer;
(7) The labeling requirements for packages containing a combination of any nonfertilizer material and mixed tobacco fertilizer;
(8) Registration and labeling requirements for grades and brands of fertilizer carrying any guarantee of boron; the tolerance allowances for the percentage of boron in fertilizer mixtures;
(9) The required composition for boron-landplaster mixtures before they may be registered and sold for use on peanuts in this State; the labeling requirements for each container of such mixture;
(10) The monetary penalties assessed for excesses or deficiencies of boron and all other minor elements above or below the tolerances allowed;
(11) The registration and labeling of general crop grades and tobacco grades;
(12) The method, and the time limitations for the reporting to the Commissioner of Agriculture of the tonnage of each grade of fertilizer shipped to each destination in the State by each manufacturer or firm having fertilizer registered in this State;
(13) The required composition, before such mixtures may be registered and sold in this State, of fertilizer-pesticide, landplaster-pesticide, and fertilizer-landplaster-pesticide, when to be used for peanuts alone;
(14) The labeling and bag requirements of fertilizer-landplaster-pesticide mixtures;
(15) The standards and requirements which must be met before fertilizer-pesticide mixtures may be registered in this State. These requirements may include, but are not limited to, approval in North Carolina of both the pesticide and the fertilizer grades, approval of the mixture by the Board of Agriculture, and any labeling requirements;
(16) The standards and requirements which must be complied with before fertilizers-pesticides may, without registering the mixture, be mixed for direct application at the farmer's request;
(17) Requests for mixing any pesticide with fertilizer, for products not previously approved by the Board of Agriculture;
(18) Packaging requirements for fertilizer-pesticide mixtures sold either in bulk or in bags, such that dusting, spillage, sifting, or a loss of any fertilizer-pesticide mixture will not occur;
(19) The percentages of nitrogen required to be in nitrogen solutions, before such solutions may be registered and sold in this State;
(20) The labeling of fertilizer products to ascertain their compliance to the Fertilizer or Lime and Landplaster Law;
(21) Requesting substantiating data to back up claims made about a fertilizer product; registration may be denied if such data is not furnished;
(22) The denial of approval of the registration of fertilizer products when such products will not, when used as directed, supply deficient needs of a plant;
(23) Safety requirements for the movement, handling and storage of fluid fertilizers;
(24) Standards and requirements for equipment and tanks for handling liquid fertilizer;

(25) Refusing registration as a result of information or recommendations from the director of research stations;
(26) Establishing minimum guarantees permissible for registering secondary elements and micro-nutrients. (1947, c. 1086, s. 15; 1949, c. 637, s. 4; 1977, c. 303, s. 19.)

§ 106-674. Short weight. — If any commercial fertilizer in the possession of the consumer is found by the Commissioner to be short in weight, the registrant of said commercial fertilizer shall within 30 days after official notice from the Commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. The Commissioner may in his discretion allow reasonable tolerance for short weight due to loss through handling and transporting. (1947, c. 1086, s. 16; 1977, c. 303, s. 20.)

§ 106-675. Publication of information concerning fertilizers. — The Commissioner shall publish at least annually, in such forms as he may deem proper, complete information concerning the sales of commercial fertilizers, together with a report of the results of the analyses based on official samples of commercial fertilizers sold or offered for sale within the State; such data on their production and use as he may consider advisable; provided, however, that the information concerning production and use of commercial fertilizers shall be shown separately for periods July first to December thirty-first and January first to June thirtieth of each year, and that no disclosure shall be made of the operations of any person. (1947, c. 1086, s. 14; 1959, c. 706, s. 9; 1977, c. 303, s. 21.)

§ 106-676. Sales or exchanges between manufacturers, etc. — Nothing in this Article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers or manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers who have registered their brands as required by the provisions of this Article. (1947, c. 1086, s. 21; 1977, c. 303, s. 22.)

§ 106-677. Grade-tonnage reports. — Each person registering commercial fertilizers under this Article shall furnish the Commissioner with a written statement of the tonnage of each grade of fertilizer sold by him in this State. This information shall be held in confidence by the Commissioner. Said statement shall include all sales for the periods of July first to and including December thirty-first and of January first to and including June thirtieth of each year. The Commissioner may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within 30 days from date of the close of each period. The Commissioner, however, in his discretion, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operations of any person. (1947, c. 1086, s. 13; 1977, c. 303, s. 23.)

Chapter 107.

Agricultural Development Districts.

§§ 107-1 to 107-25: Repealed by Session Laws 1971, c. 780, s. 20.

Chapter 108.

Social Services.

Article 1.

Administration.

Part 1. The State Board of Social Services.

Sec.
108-1 to 108-4. [Repealed.]

Part 2. The Department of Social Services.

108-5, 108-6. [Repealed.]

Part 3. County Boards of Social Services.

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108-61.2. Subrogation rights; withholding of information a misdemeanor.
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Part 6. State-County Special Assistance for Adults.

108-62. Purpose and eligibility.

Editor's Note. — Session Laws 1973, c. 476, s. 138, subsection (1), provides that whenever the words "State Board of Social Services" and "State Board" are used or appear in any statute or law of this State, the same shall be deleted and the words "Department of Human Resources" or "Department," as appropriate, shall be substituted, unless otherwise provided in the act. Session Laws 1973, c. 476, s. 138, subsection (2), provides that whenever the words "Commissioner for Social Services" or "Commissioner," when referring to the Commissioner for Social Services, appear in any statute or law of this State, the same shall be deleted and the words "Secretary of Human Resources" or "Secretary," as appropriate, shall be substituted, unless otherwise provided in the act. Session Laws 1973, c. 476, s. 138, subsection (3), provides that whenever the words "North Carolina State Department of Social Services" are used or appear in any statute or law of this State, the same shall be deleted and the words "Department of Human Resources" or "Department," as appropriate, shall be substituted, unless otherwise provided in the act. In this Chapter as it stood at the time of passage of the 1973 act, the State Board of Social Services was occasionally referred to simply as the "Board of Social Services," and the title of the Commissioner was "Commissioner of Social Services." The words "North Carolina State Department of Social Services" did not appear anywhere in the Chapter, the Department being usually referred to as the "State Department of Social Services," and occasionally as the "State Department." In order to give effect to the obvious intent of the 1973 act, references to the Department and Secretary of Human Resources have been substituted for references to the State Department, Board and Commissioner of Social Services throughout this Chapter and elsewhere in the General Statutes, notwithstanding the fact that in a number of instances the precise titles quoted in the 1973 act were not used in the sections so treated as amended.

ARTICLE 1.

Administration.

Part 1. The State Board of Social Services.

§§ 108-1 to 108-4: Repealed by Session Laws 1973, c. 476, s. 138.

Cross Reference. — As to the Social Services Commission, see §§ 143B-153 to 143B-156.

Part 2. The Department of Social Services.

§§ 108-5, 108-6: Repealed by Session Laws 1973, c. 476, s. 138.

Part 3. County Boards of Social Services.

§ 108-7. Creation. — Every county shall have a board of social services which shall establish county policies for the programs established by this Chapter in conformity with the rules and regulations of the Social Services Commission and under the supervision of the Department of Human Resources. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§ 108-8. Size. — The county board of social services in each county shall consist of three members, except that the board of commissioners of any county may increase such number to five members. The decision to increase the size to five members or to reduce a five-member board to three shall be reported immediately in writing by the chairman of the board of commissioners to the Department of Human Resources. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§ 108-9. Method of appointment; residential qualifications; fee or compensation for services. — (a) Three-Member Board: The board of commissioners shall appoint one member who may be a county commissioner or a citizen selected by the board; the Social Services Commission shall appoint one member; and the two members so appointed shall select the third member. In the event the two members so appointed are unable to agree upon selection of the third member, the senior regular resident superior court judge of the county shall make the selection.

(b) Five-Member Board: The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the Social Services Commission shall appoint two members each, and the four so appointed shall select the fifth member. If the four are unable to agree upon the fifth member, the senior regular resident superior court judge of the county shall make the selection.

(c) Provided further that each member so appointed under subsection (a) and subsection (b) of this section by the Social Services Commission and by the county board of commissioners or the senior regular resident superior court judge of the county, shall be bona fide residents of the county from which they are appointed to serve, and will receive as their fee or compensation for their services rendered from the Department of Human Resources directly or indirectly only the fees and compensation as provided by G.S. 108-14. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 369; 1973, c. 476, s. 138.)

§ 108-10. Term of appointment. — Each member of a county board of social services shall serve for a term of three years. No member may serve more than two consecutive terms. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-11. Order of appointment. — (a) Three-Member Board: The term of the member appointed by the Social Services Commission shall expire on June 30, 1969, and every three years thereafter; the term of the member appointed by the board of commissioners shall expire on June 30, 1971, and every three years thereafter; and the term of the third member shall expire on June 30, 1970, and every three years thereafter.

(b) Five-Member Board: Whenever a board of commissioners of any county decides to expand a three-member board to a five-member board of social services, the Social Services Commission shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the board of commissioners, and the board of commissioners shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the Social Services Commission. The change to a five-member board shall become effective at the time when the additional members shall have been appointed by both the county board of commissioners

and the Social Services Commission. Thereafter all appointments shall be for three-year terms.

(c) Change from Five-Member to Three-Member Board: The change shall become effective on the first day of July following the decision to change by the board of commissioners. On that day, the following two seats on the board of social services shall cease to exist:

(1) The seat held by the member appointed by the Social Services Commission whose term would have expired on June 30, 1971, or triennially thereafter; and

(2) The seat held by the member appointed by the board of commissioners whose term would have expired on June 30, 1972, or triennially thereafter. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 724, s. 1.)

§ 108-12. Vacancies. — Appointments to fill vacancies shall be made in the manner set out in G.S. 108-9. All such appointments shall be for the remainder of the former member's term of office and shall not constitute a term for the purposes of G.S. 108-10. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-13. Meetings. — The board of social services of each county shall meet at least once per month or more often if a meeting is called by the chairman. Such board shall elect a chairman from its members at its July meeting each year, and the chairman shall serve a term of one year or until a new chairman is elected by the board. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-14. Compensation of members. — Members of the county board of social services may receive a per diem in such amount as shall be established by the county board of commissioners and travel expenses not to exceed the amounts provided by G.S. 138-5 for attendance at official meetings and conferences, provided such per diem or travel is authorized by the board of commissioners. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C.S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 124.)

Local Modification. — Columbus: 1973, c. 279.

§ 108-15. Duties and responsibilities. — The county board of social services shall have the following duties and responsibilities:

(1) To select the county director of social services according to the merit system rules of the State Personnel Board.

(2) To advise county and municipal authorities in developing policies and plans to improve the social conditions of the community.

(3) To consult with the director of social services about problems relating to his office, and to assist him in planning budgets for the county department of social services.

(4) To transmit or present the budgets of the county department of social services for public assistance and administration to the board of county commissioners.

(5) To have such other duties and responsibilities as the General Assembly or the Social Services Commission or the board of county commissioners may assign to it. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§ 108-16. Inspection of records by members. — Every member of the county board of social services may inspect and examine any record on file in the office of the director relating in any manner to applications for and payments of public assistance authorized by this Chapter. No member shall disclose or make public any information which he may acquire by examining such records. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

Part 4. County Director of Social Services.

§ 108-17. Appointment. — (a) The board of social services of every county shall appoint a director of social services in accordance with the merit system rules of the State Personnel Board. Any director dismissed by such board shall have the right of appeal under the same rules.

(b) Two or more boards of social services may jointly employ a director of social services to serve the appointing boards and such boards may also combine any other functions or activities as authorized by G.S. 153-246. The boards shall agree on the portion of the director's salary and the portion of expenses for other joint functions and activities that each participating county shall pay. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

Editor's Note. — Section 153-246, referred to in subsection (b), was repealed by Session Laws 1973, c. 822. For present provisions as to counties, see Chapter 153A.

§ 108-18. Salary. — The board of social services of every county shall determine the salary of the director in accordance with the classification plan of the State Personnel Board, and such salary shall be paid by the county from the federal, State and county funds available for this purpose. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

County Commissioners May Set Salary of Director of Social Services at a Higher or Lower Level Than Set by Board of Social Services. — See opinion of Attorney General to Mr. James C. Fox, 41 N.C.A.G. 696 (1971).

§ 108-19. Duties and responsibilities. — The director of social services shall have the following duties and responsibilities:

(1) To serve as executive officer of the board of social services and act as its secretary.

(2) To appoint necessary personnel of the county department of social services in accordance with the merit system rules of the State Personnel Board.

(3) To administer the programs of public assistance established by this Chapter.

(4) To administer funds provided by the board of commissioners for the care of indigent persons in the county under policies approved by the county board of social services.
(5) To act as agent of the Social Services Commission in relation to work required by the Social Services Commission in the county.
(6) To investigate cases for adoption and to supervise adoptive placements.
(7) To issue employment certificates to children under the regulations of the State Department of Labor.
(8), (9) Repealed by Session Laws 1973, c. 1339, s. 2.
(10) To supervise boarding homes, rest homes and convalescent homes for aged or infirm persons, under the rules and regulations of the Social Services Commission.
(11) To investigate, prepare, and submit petitions for the sterilization of eligible county residents to the Eugenics Commission and to arrange for operations authorized by the said Commission.
(12) To assist and cooperate with the Department of Correction and the Department of Correction and their representatives.
(13) To keep informed of the condition of persons discharged from hospitals for the mentally ill.
(14) To investigate reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 8 of Chapter 110 of the General Statutes.
(15) To accept children for placement in foster homes and to supervise placements for so long as such children require foster home care. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5017; 1941, c. 270, s. 5; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 710, s. 5; 1973, c. 476, ss. 133.3, 138; c. 1262, s. 109; c. 1339, s. 2.)

Cross Reference. — For present provisions as to juvenile services, see §§ 7A-289.1 through 7A-289.7.

§ 108-19.1. Social Services officials and employees as public guardians. — The director and assistant directors of social services of each county are authorized to serve as guardians for adults adjudicated incompetent under the provisions of Chapter 35, Article 1A, and they shall do so if ordered to serve in that capacity by the clerk of the superior court having jurisdiction of a guardianship proceeding brought under that Article. (1977, c. 725, s. 6.)

Cross Reference. — As to mental health officials and employees as public guardians, see § 122-24.1.

Part 5. Special County Attorneys for Social Service Matters.

§ 108-20. Appointment. — With the approval of the board of social services, the board of commissioners of any county may appoint a licensed attorney to serve as a special county attorney for social service matters, or designate the county attorney as special county attorney for social service matters. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-21. Compensation. — The special county attorney for social service matters shall receive compensation for the performance of his duties and for his expenses in such amount as the board of commissioners may provide. His compensation shall be a proper item in the annual budget of the county

department of social services. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-22. Duties and responsibilities. — (a) The special county attorney shall have the following duties and responsibilities:

(1) To serve as legal advisor to the county director, the county board of social services, and the board of county commissioners on social service matters.

(2) To represent the county, the plaintiff, or the obligee in all proceedings brought under the Uniform Reciprocal Enforcement of Support Act and to exercise continuous supervision of compliance with any order entered in any proceeding under that act.

(3) To represent the county board of social services in appeal proceedings and in any litigation relating to appeals.

(4) To discharge the duties of the county attorney in respect to the lien created by G.S. 108-29, if such duties be assigned to him by the board of county commissioners with the consent and approval of the county attorney.

(5) To assist the district court prosecutor or superior court district attorney with the preparation and prosecution of criminal cases under Article 40 of Chapter 14 of the General Statutes, entitled "Protection of the Family."

(6) To assist the district court prosecutor or superior court district attorney with the preparation and prosecution of proceedings authorized by Chapter 49 of the General Statutes, entitled "Bastardy."

(7) To perform such other duties as may be assigned to him by the board of county commissioners, the board of social services, or the director of social services.

(b) In performing any of the duties and responsibilities set out in this section, the special county attorney is authorized to call upon any director of social services or the Department of Human Resources for any information as he may require to perform his duties, and such director and Department are directed to assist him in performing such duties. (1959, c. 1124, ss. 2, 3; 1969, c. 546, s. 1; 1973, c. 47, s. 2; c. 476, s. 138.)

Editor's Note. — Section 108-29, referred to in subdivision (4) of subsection (a), was repealed by Session Laws 1973, c. 204, s. 1.

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:

(1) Aid to the aged and disabled;

(2) Aid to families with dependent children;

(3) State-county special assistance for adults;

(4) Medical assistance; and

(5) Foster home fund. (1937, c. 135, s. 1; c. 288, ss. 3, 31; 1949, c. 1038, s. 2; 1955, c. 1044, s. 1; 1957, c. 100, s. 1; 1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1975, c. 92, s. 4.)

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

State Participation Is Voluntary. — Participation by the State in aid to families with dependent children is not required but voluntary; implementation is left to the states. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971).

§ 108-24. Definitions. — As used in Article 2:

(1) "Applicant" is any person who requests assistance or on whose behalf assistance is requested.

(2) "Assistance" is money payments, medical care, remedial care, and goods or services, to or for eligible persons.

(3) "Dependent child" is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support; it shall also include a minor who has been eligible for AFDC who is now living in a foster-care facility or child-caring institution; it shall also include a person under 21 years of age as provided by Titles IV-A and XIX of the Social Security Act.

(4) "Medical assistance" is any program of medical, dental, optometric or other health-related services approved by the Social Services Commission.

(5) "Permanently and totally disabled" is a person who has a physical or mental impairment which substantially precludes him from obtaining gainful employment, and such impairment appears reasonably certain to continue without substantial improvement throughout his lifetime.

(6) "Recipient" is a person to whom, or on whose behalf, assistance is granted under this Article.

(7) "Resident" is a person who has resided continuously within the State of North Carolina for at least one year prior to the date on which application for assistance to him is made with a county department of social services. (1937, c. 288, ss. 4, 32; 1939, c. 395, s. 1; 1949, c. 1038, s. 2; 1951, c. 1098, ss. 3, 4, 5; 1957, c. 100, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 1231, s. 1; 1973, c. 476, s. 138; c. 743; 1977, c. 1127.)

Editor's Note. — The 1977 amendment added "it shall also include a person under 21 years of age as provided by Titles IV-A and XIX of the Social Security Act" to the end of subdivision (3).

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

§ 108-24.1. Certain financial assistance and in-kind goods not considered in determining assistance paid under Chapters 108 and 111. — Financial assistance and in-kind goods or services received from a governmental agency, or from a civic or charitable organization, shall not be considered in determining the amount of assistance to be paid any person under Chapters 108 and 111 of the General Statutes provided that such financial assistance and in-kind goods and services are incorporated in the rehabilitation plan of such person being assisted by the Division of Vocational Rehabilitation of the Department of Human Resources or the Vocational Rehabilitation Program of the Commission for the Blind. (1973, c. 716.)

Part 1. Aid to the Aged and Disabled.

§ 108-25. Eligibility requirements. — Assistance shall be granted to any person who:

(1) Is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled;

(2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission;

(3) Is a resident of North Carolina;

(4) Repealed by Session Laws 1973, c. 1407. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 753, s. 1; 1945, c. 615, ss. 1, 2; 1947, c. 91, s. 1; 1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, cc. 788, 1085; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 1407.)

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

§ 108-26. Determination of disability. — (a) An applicant between the ages of 18 and 65 seeking assistance under this Part must be found to be permanently and totally disabled as defined in G.S. 108-24 by a physician or by a medical review board in his county of residence; such physician or board must submit any findings of disability to the county department of social services for transmittal to the Department of Human Resources.

(b) All applications for assistance as a permanently and totally disabled person shall be reviewed by medical consultants employed by the Department of Human Resources. The final decision on the disability factor shall be made by such medical consultants under rules and regulations adopted by the Social Services Commission. (1963, c. 788; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§ 108-27. Direct payments for nursing and custodial care. — (a) The Department of Human Resources is authorized and empowered to make payments to duly licensed nursing homes or extended care facilities for persons eligible to receive assistance to the aged and disabled when nursing care is found to be essential for such persons by the Department of Human Resources under the rules and regulations of the Social Services Commission.

(b) The Department of Human Resources is authorized and empowered to make payments to family care homes, homes for the aged and intermediate care homes for persons eligible to receive assistance to the aged and disabled when such facilities are found to be essential for such persons by a county department of social services under the rules and regulations of the Social Services Commission.

(c) The Department of Human Resources is authorized and empowered to utilize funds available to the Department to increase the rates for licensed family care homes or homes for the aged, or payments made for this purpose to persons assigned by the Department to these homes, to offset the increased costs due to any additional increases in minimum wages required by federal or State laws after April 15, 1973. (1967, c. 1211, s. 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 817.)

§ 108-28. Limitations on payments. — No payment of public assistance derived from federal, State or local sources shall be made for the care of any person in a nursing home, home for the aged, family care home, or intermediate care home which is owned or operated in whole or in part by any of the following:

(1) A member of the Social Services Commission, of any county board of social services, or of any board of county commissioners;
(2) An official or employee of the Department of Human Resources or of any county department of social services;
(3) A spouse of a person designated in subdivisions (1) and (2). (1917, c. 170, s. 1; C. S., s. 5012; 1959, c. 715; 1965, c. 48; 1967, c. 983; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§§ 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 2. Aid to Families with Dependent Children.

§ 108-38. Eligibility requirements; certain contributions to be disregarded. — (a) Assistance shall be granted to any dependent child, as defined in G.S. 108-24, who:
(1) Is a resident of the State or whose mother was a resident when the child was born;
(2) Has been deprived of parental support or care by reason of a parent's death, physical or mental incapacity, or continued absence from the home;
(3) Has no adequate means of support.

(b) Subject to the limitation hereafter set out in this subsection, in computing available income and resources under this Part with regard to determining eligibility for a grant of assistance for any one child, or for any two or more children living together in a family group, there shall be disregarded, for any calendar month, the first thirty dollars ($30.00) and one third of the excess over thirty dollars ($30.00) provided by any parent whose absence is one of the reasons for eligibility for his or her children. This subsection shall apply only to the extent that such payments are provided for under a court order or judgment, or contract, providing for such payments, a copy of which is on file with the county department of social services.

The provisions of this subsection shall cease to be effective in the event of and upon any final determination by the Secretary of Health, Education and Welfare that such provisions do not comply substantially with any provision required by federal law to be included in a State plan for aid and services to needy families with children. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1961, c. 533; 1965, c. 939, s. 1; 1967, c. 660; 1969, c. 546, s. 1; 1973, c. 714, ss. 1-3; c. 826.)

Editor's Note. — For note on illegitimacy in North Carolina, see 46 N.C.L. Rev. 813 (1968).

For note on the "man in the house" or "substitute parent" rule in determining eligibility for aid to dependent children, see 47 N.C.L. Rev. 228 (1968).

Infringement upon Right to Subsistence Is Deprivation of Personal Liberty. — Children have a right to subsistence and infringement upon that right is a deprivation of personal liberty which gives rise to a cause of action under 42 U.S.C. § 1983, and there is jurisdiction in a district court under 28 U.S.C. § 1343. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971).

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

Eligibility of Children for Aid to Families with Dependent Children Although Parent Does Not Qualify as a Payee. — See opinion of Attorney General to Colonel Clifton M. Craig,

Commissioner, Department of Social Services, 40 N.C.A.G. 652 (1970).

Aid for Unborn Children. — The policy of this State not to recognize aid to families with dependent children and Medicaid eligibility for needy women with unborn children does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it does not have a racially discriminatory effect or a racially discriminatory purpose. Taylor v. Hill, 420 F. Supp. 1020 (W.D.N.C. 1976), aff'd, 430 U.S. 961, 97 S. Ct. 1639, 52 L. Ed. 2d 352 (1977).

The policy of this State not to recognize aid to families with dependent children and Medicaid eligibility for needy women with unborn children, while the State does recognize aid to families with dependent children and Medicaid eligibility for needy women with born children, is not arbitrary and irrational and, therefore, does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Taylor v. Hill, 420 F. Supp. 1020 (W.D.N.C. 1976), aff'd, 430 U.S. 961, 97 S. Ct. 1639, 52 L. Ed. 2d 352 (1977).

The policy of this State not to recognize aid to families with dependent children and Medicaid eligibility for needy women with unborn children does not have a racially discriminatory effect. Taylor v. Hill, 420 F. Supp. 1020 (W.D.N.C. 1976), aff'd, 430 U.S. 961, 97 S. Ct. 1639, 52 L. Ed. 2d 352 (1977).

§ 108-39. Limitations on eligibility. — (a) No assistance shall be granted to any dependent child who:

(1) Has passed his sixteenth birthday and has the ability and capacity for gainful employment, unless he is regularly enrolled and attending school or unless no gainful employment is available, except that a dependent child over 16 years of age and attending school is not eligible for assistance during the summer months unless no gainful employment is available;

(2) Has passed his eighteenth birthday unless he is regularly attending and successfully pursuing (i) a course of study leading to a high school diploma or its equivalent, (ii) a course of study at the college level, or (iii) a course of vocational or technical training designed to fit him for gainful employment.

(b) No applicant for or recipient of an aid to families with dependent children grant who has the ability and capacity for gainful employment but who is not employed on a part-time or full-time basis shall have his needs included in an aid to families with dependent children grant unless he registers with the Employment Security Commission and accepts reasonable employment when it is available. The needs of the remaining family members shall be met in the form of a protective payment in accordance with G.S. 108-50 in the event that a recipient-payee is declared ineligible for aid to families with dependent children by the county department of social services for failure to register with the Employment Security Commission or to accept reasonable employment when it is available.

(c) A recipient of an aid to families with dependent children grant is specifically exempt from the registration and employment requirements of subsection (b) if he is:

(1) A child who is under age 16 or attending school full time;
(2) A person who is ill, incapacitated, or of advanced age;
(3) A person so remote from a local office of the Employment Security Commission or an available employment opportunity that his effective participation is precluded;
(4) A person whose presence in the home is required because of illness or incapacity of another member of the household; or
(5) A mother or other relative of a child under the age of six who is caring for the child.

(d) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for aid to families with dependent children grants, regardless of whether or not they have applied for such grants, shall be given priority in obtaining manpower services including training and public service employment provided by or through State agencies

or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons. (1961, c. 998; 1963, c. 1061; 1965, c. 939, s. 2; 1969, c. 546, s. 1; 1971, c. 283; 1973, c. 476, s. 138; 1977, c. 362.)

Editor's Note. — The 1977 amendment rewrote subsections (b) and (c) and added subsection (d).

Eligibility of Children for Aid to Families with Dependent Children Although Parent Does Not Qualify as a Payee. — See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, Department of Social Services, 40 N.C.A.G. 652 (1970).

§ 108-39.1. Work incentive program adopted; evidence of refusal to participate in special work projects; protective and vendor payments. — (a) The provisions of Part C of Title IV of the Federal Social Security Act pertaining to the work incentive program for recipients of aid to families with dependent children assistance, and the benefits thereunder, are hereby accepted and adopted.

(b) The work incentive program provided for by this section is a part of, and subject to all the same provisions of law as, the aid to families with dependent children program provided for in this Article; except that in the case of inconsistent provisions, the provisions of this section shall be deemed exceptions to other provisions of law in this Article.

(c) Written notice of a finding by the United States Secretary of Labor, or the United States Department of Labor, the Employment Security Commission, or other authorized agent of the Secretary of Labor as to whether a person has refused without good cause to accept employment or participate in a project shall be binding upon the State and its agencies and the political subdivisions of the State. Any other provision of law to the contrary notwithstanding, the original or copy of such a notice bearing the certification of a State or county agency that it is the original or true copy of the original in or from the records of the agency shall be admissible in evidence without the appearance of a witness, and it shall be prima facie evidence that it was duly received by the agency from the Secretary of Labor or his authorized agent.

(d) to (f) Repealed by Session Laws 1973, c. 744, s. 2.

(g) Protective and vendor payments required to be made under the work incentive program shall be made in accordance with the rules and regulations of the Social Services Commission, which rules and regulations shall be subject to the lawful requirements of the Secretary of Labor. (1969, c. 739, s. 2; 1973, c. 476, s. 138; c. 744, s. 2.)

Part 3. The Administration of Aid to the Aged and Disabled and Aid to Families with Dependent Children.

§ 108-40. Application for assistance. — Any person who believes that he or another person is eligible to receive aid to the aged and disabled or aid to families with dependent children may submit an application for assistance to the county department of social services in the county in which the applicant resides. It shall be made in such form and shall contain such information as the Social Services Commission may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 742.)

§ 108-41. Investigation of applicant. — Upon receipt of an application for public assistance, the county department shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the

applicant's eligibility for assistance and to obtain such other information as the Department of Human Resources may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 38.)

§ 108-42. Granting or denial of assistance. — (a) The county director of social services shall submit his findings and recommendations on each application for aid to the aged and disabled and aid to families with dependent children to the county board of social services at its next meeting for its approval of assistance in each case, except that the disability factor of applications for aid to the disabled shall be finally determined by the Department of Human Resources as provided in G.S. 108-26.

(b) The county board of social services may delegate authority to the director to consider and process applications for assistance in all cases that require immediate action to prevent undue hardship; in such cases, the director shall report on his actions to the board at its next meeting, and the board shall approve, reject or modify such decisions.

(c) The board of county commissioners may review any grant approved by the county board of social services. The recipient of a disputed grant shall receive notice of the time and place of such review. If the board of commissioners deems that a grant was improperly allowed under the policies of the Social Services Commission, it may order that proper action be taken, with notice thereof given to the recipient and a copy to the county board of social services and the Secretary of Human Resources. Any modification made by the board of county commissioners shall be subject to review by the Secretary of Human Resources.

(d) All rules and regulations of the Social Services Commission which govern eligibility for public assistance from State appropriations or the amount of public assistance grants shall be subject to the approval of the Director of the Budget and the Advisory Budget Commission. (1937, c. 288, ss. 15, 16, 45, 46; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 523, s. 1; 1973, c. 476, s. 138.)

Child's Support Payments Are Not Resource of Entire Family. — In calculating aid to families with dependent children benefits the inclusion of support payments belonging to one child as a resource available to the entire family works an unlawful appropriation of the funds of both supporting father and supported child. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971).

In calculating aid to families with dependent children benefits the income of an individual with no legal duty of support may not be presumed to be available to the family, thus the contribution to the support of one child by one having no legal duty to support the rest of the family cannot be considered a resource available to that family. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971).

§ 108-43. Reconsideration of grants. — All grants of public assistance shall be considered as frequently as required by the rules of the Social Services Commission. Whenever the condition of any recipient has changed to the extent that his award must be modified or terminated, the county director may make the appropriate termination or change in payment and submit it to the county board of social services for approval at its next meeting. Prompt notice of all changes shall be given to the recipient, to the Department of Human Resources, and to the board of county commissioners. (1937, c. 288, ss. 19, 49; 1969, c. 546, s. 1; 1971, c. 523, s. 2; 1973, c. 476, s. 138.)

Authority of State Board to Order a Uniform Raise in Welfare Payments without Processing Each File. — See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, State Department of Social Services, 40 N.C.A.G. 703 (1970).

§ 108-44. Appeals. — (a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services or the board of county commissioners granting or denying assistance, or modifying the amount of assistance, or the failure of the county board of social services to act within a reasonable time under the rules and regulations of the Social Services Commission, to the Secretary of Human Resources. Each applicant or recipient shall be notified of this right to appeal when applying for assistance and upon any subsequent action of the county board on his case. An applicant or recipient may give notice of appeal by written notice to the county department of social services or through verbal notice to personnel employed by said county department.

(b) If there is such an appeal, the county director shall notify the Department of Human Resources according to the rules and regulations of the Social Services Commission and the Department of Human Resources shall designate a hearing officer who shall promptly hold an appeal hearing in the county after giving reasonable notice of the time and place of such hearing to the appellant and the county department of social services.

(c) At the appeal hearing before the hearing officer, the appellant and personnel of the county department of social services shall present such facts as may bear upon the case. After such hearing, the hearing officer shall forward a transcript of the hearing to the Department of Human Resources, to the county department of social services, and to the appellant or his attorney, which transcript or other documents considered at the appeal hearing shall serve as the basis for the Secretary's decision on such appeal.

(d) The Secretary of Human Resources shall make a decision on such appeal in conformity with federal and State law and the rules and regulations of the Social Services Commission. The Secretary shall notify the appellant and the county board of social services of his decision in writing by mail. The decision of the Secretary on such an appeal shall be binding upon the county board of social services and the board of county commissioners unless there is a petition for court review as provided in (e) herein.

(e) Any appellant or county board of social services who is dissatisfied with the decision of the Secretary may file a petition within 30 days after receipt of written notice of such decision for a hearing in the Superior Court of Wake County or of the county from which the case arose. Such court shall set the matter for a hearing within 30 days after receipt of such petition and after reasonable written notice to the Department of Human Resources, the county board of social services, the board of county commissioners, and the appellant. The court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to public assistance under federal and State law, and under the rules and regulations of the Social Services Commission. The court may affirm, reverse or modify the order of the Secretary.

(f) If and when any federal law or regulation requires, as a condition of federal participation in public assistance payments, that public assistance applicants or recipients be furnished with the services of attorneys for the purpose of appeals described in this section or for the purpose of litigation arising out of such appeals, the services of attorneys shall be provided as required by the federal law or regulation, to the extent that funds are made available as hereinafter provided, in accordance with rules and regulations approved by the Governor, the Advisory Budget Commission, the Social Services Commission and the North Carolina State Bar Council. To the extent permitted by the rules and regulations thus approved, payment for the services of attorneys shall be made by the Department of Human Resources from funds transferred from contingency and emergency appropriations until such time as funds are appropriated for the services of attorneys.

(g) If and when federal laws or lawful regulations made pursuant to applicable federal laws are enacted requiring that, as a condition for federal participation in the costs of public assistance provided for in this Chapter, assistance payments must be continued pending the outcome of a hearing or litigation or informal contact with an assistance recipient, assistance shall be continued in accordance with such federal laws or regulations. (1937, c. 288, ss. 18, 48; 1939, c. 395, s. 1; 1957, c. 100, s. 1; 1969, c. 546, s. 1; cc. 735, 754; 1973, c. 476, s. 138.)

Secretary May Delegate Decision-Making Authority regarding Appeals. — See opinion of Attorney General to Mr. David T. Flaherty, N.C. Department of Human Resources, 42 N.C.A.G. 313 (1973).

§ 108-45. Confidentiality of records. — (a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance that may be directly or indirectly derived from the records, files or communications of the Department of Human Resources or the county boards of social services, or acquired in the course of performing official duties except for purposes directly connected with the administration of the programs of public assistance in accordance with the rules and regulations of the Social Services Commission.

(b) The Department of Human Resources shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all public assistance recipients, their addresses, and the amounts of the monthly grants. This register shall be a public record open to public inspection during the regular office hours of the county auditor, but said register or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a misdemeanor.

(c) Any listing of recipients of benefits under any financial assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed financial assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a general misdemeanor. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; c. 882, ss. 1, 2, 4; 1959, c. 179, ss. 1, 2; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; cc. 721, 1213.)

Although the Public Assistance Recipient Check Register Is a Public Record, It May Not Be Used for Any Commercial or Political Reason, Including Publication by the Media. — See Opinion of Attorney General to Dr. Renee P. Hill, Director, Division of Social Services, N.C. Department of Human Resources, 45 N.C.A.G. 273 (1976).

§ 108-46. Removal to another county. — Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of one month following his move, and thereafter the county to which

the recipient has moved shall pay such assistance. (1937, c. 288, ss. 20, 50; 1943, c. 505, ss. 3, 7; 1961, c. 186; 1963, c. 136; 1969, c. 546, s. 1; 1977, c. 654.)

Editor's Note. — The 1977 amendment substituted "one month" for "three months" in the third sentence.

§ 108-47. Assistance not assignable; checks payable to decedents. — The assistance granted by this Article shall not be transferable or assignable at law or in equity; and none of the money paid or payable as assistance shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law.

In the event of the death of an assistance recipient during or after the first day of the month for which a grant was previously authorized by the county social services board, any assistance check or checks payable to such recipient not endorsed prior to such recipient's death shall be delivered to the clerk of superior court and by him administered under the provisions of G.S. 28A-25-6. In the event of the death of a recipient of a cash payment service, any check or checks payable to such recipient but not endorsed prior to such recipient's death shall be returned to the issuing agency, made void, and reissued to the provider of the service. (1937, c. 288, ss. 17, 47; 1945, c. 615, s. 1; 1953, c. 213; 1969, c. 546, s. 1; 1971, c. 446, ss. 1, 2; 1977, c. 655, ss. 1, 2.)

Editor's Note. — The 1977 amendment, in the second paragraph, substituted "G.S. 28A-25-6" for "G.S. 28-68 through G.S. 28-68.3" at the end of the first sentence and added the second sentence.

§ 108-48. Fraudulent misrepresentation. — (a) Any person whether provider or recipient who willfully and knowingly with the intent to deceive makes a false statement or representation or fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, attempts to obtain, or continues to receive public assistance to which he or any other person is not entitled in the amount of not more than two hundred dollars ($200.00) is guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(b) Any person whether provider or recipient who willfully and knowingly with the intent to deceive makes a false statement or representation or fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, attempts to obtain, or continues to receive public assistance to which he is not entitled, in an amount of more than two hundred dollars ($200.00) is guilty of a felony, and upon conviction or plea of guilty shall be punished as in cases of larceny. (1937, c. 288, ss. 27, 57; 1963, cc. 1013, 1024, 1062; 1969, c. 546, s. 1; 1977, c. 604, s. 1.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 108-49. Personal representative for mismanaged grants. — (a) Whenever a county director of social services shall determine that a recipient of assistance is unwilling or unable to manage assistance grants to the extent that deprivation or hazard to himself or others results, the director shall file a petition before a district court or the clerk of superior court in the county alleging such facts and requesting the appointment of a personal representative to be responsible for receiving such grants and to use them for the benefit of the recipient.

(b) Upon receipt of such petition, the court shall promptly hold a hearing, provided the recipient shall receive five days' notice in writing of the time and place of such hearing. If the court, sitting without a jury, shall find at the hearing that the facts alleged in the petition are true, it may appoint some responsible person as personal representative. The personal representative shall serve without compensation and be responsible to the court for the faithful performance of his duties. He shall serve until the director of social services or the recipient shows to the court that the personal representative is no longer required or is unsuitable. All costs of court relating to proceedings under this section shall be waived.

(c) Any recipient for whom a personal representative is appointed may appeal such appointment to superior court for a hearing de novo without a jury.

(d) All findings of fact made under the proceedings authorized by this section shall not be competent as evidence in any case or proceeding which concerns any subject matter other than that of appointing a personal representative. (1959, c. 1239, ss. 1, 3; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-50. Protective and vendor payments. — Instead of the use of personal representatives provided for by G.S. 108-49, when necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the Social Services Commission, which rules and regulations shall be subject to applicable federal laws and regulations. (1963, c. 380; 1969, c. 546, s. 1; c. 747; 1973, c. 476, s. 138.)

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

§ 108-51. Acceptance of grants-in-aid. — The Department of Human Resources is hereby authorized to accept all grants-in-aid for the programs of public assistance established under this Article which may be available to the State by the federal government under the Social Security Act. The provisions of this Article shall be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. (1937, c. 288, ss. 5, 33; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§ 108-52. Transfer of funds to counties. — (a) A state fund for each program of public assistance established under this Article is hereby created from federal appropriations or State appropriations, or the combination of both, as applicable, to such program. Each State fund shall be drawn out on the warrant of the State Treasurer and issued upon order of the Secretary of Human Resources. Quarterly, or more often if appropriate, the Secretary shall transfer to each county that part of the county's allotment from each State fund that the county is required to disburse for its public assistance programs during the appropriate period. Before transferring such funds, the Secretary may require that the county certify, through its auditor or fiscal agent, that sufficient county funds are available to pay the county's share of the public assistance expenditures corresponding to the amount of State money to be transferred.

(b) The Secretary may transfer to any county an amount sufficient to pay in full the grants approved in that county for the first quarter in any fiscal year. One fourth of this amount shall be advanced in anticipation of the collection of taxes and shall be deducted from future allotments within the same fiscal year to that county.

(c) When the Secretary finds that the disbursement of funds by a county to qualified recipients is being unduly delayed, or that payments to recipients are jeopardized, he may require that grants be promptly paid as a condition for the allotment or transmission of State moneys to the county. State moneys may be withheld until the Secretary is satisfied that the county is paying the grants promptly.

(d) When the Department of Human Resources finds it to be in the public interest to require more adequate protection of funds collected in the county for disbursement to recipients, or the more prompt, efficient and certain payment of grants to recipients, the Secretary may demand and require that the funds raised by taxation in any county be transmitted to the State Treasurer. The Secretary shall, in such cases, give notice to the board of county commissioners and to the county officials having such funds in their custody. The board of county commissioners and responsible officials shall immediately transfer all such funds to the State Treasurer for disbursement under rules and regulations established by the Department of Human Resources. (1937, c. 288, ss. 24, 54; c. 405; 1943, c. 505, s. 10; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 717, s. 3.)

§ 108-53. Allocation of nonfederal shares. — (a) The nonfederal share of the annual cost of each public assistance program may be divided between the State and the counties in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State.

(b) The nonfederal share of the annual cost of public assistance provided to Indians living on federal reservations held in trust by the United States on their behalf shall be borne entirely by the State. The Secretary of Human Resources shall reserve from State appropriations for public assistance an amount sufficient to pay the county's share of the cost of public assistance to eligible Indian residents of federal reservations, plus related administrative costs incidental to providing such assistance, and shall pay same to counties containing such a federal reservation. (1965, c. 708; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

State Must Pay All Nonfederal Share of Medicaid Benefits for Indians Living on Federal Reservation. — See opinion of Attorney General to Mr. Clifton M. Craig, Commissioner, Department of Social Services, 41 N.C.A.G. 140 (1970).

§ 108-54. 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 by said date 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, and if administrative and program expenditures for that year in the county's aid to families with dependent children, medical assistance, State-county special assistance for adults, WIN single administrative Unit, WIN day care, and State boarding home fund for

foster care programs exceed the approved estimate of administrative and program costs for said programs, or if the administrative expenditures for that year in the county's food stamp program exceed the approved estimate of administrative costs for said program, then the county shall be eligible to borrow the required additional county share 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 borrowing 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 as well as for repayment of any amount borrowed from the "State Public Assistance Contingency Fund." (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; 1977, c. 1089, s. 1.)

Editor's Note. — The 1977 amendment inserted "by said date" in the second sentence of the first paragraph, rewrote the second paragraph, substituted "borrowing any moneys" for "receiving any moneys" near the middle of the third paragraph, and added "as well as for repayment of any amount borrowed from the 'State Public Assistance Contingency Fund' " to the end of the fourth paragraph.

Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provided: "This act shall become effective on July 1, 1974, and shall remain effective through June 30, 1977." This section was amended by Session Laws 1977, c. 1089, s. 3, which deleted "and shall remain effective through June 30, 1977" from the end.

§ 108-54.1. State Public Assistance Contingency Fund. — (a) To allow for an efficient and equitable means of providing the funds by which a county exceeds its approved estimated budget of administrative and program costs for those programs of public assistance enumerated in G.S. 108-54 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 loans to counties whose expenditures for said programs of public assistance, including administration of such programs, have exceeded the accepted budget estimate.

(b) Loans shall be made to the counties at any time during the fiscal year by the Director of the Division of Social Services, as agent for the Department of Human Resources, when satisfied of the county's need for such loan under this Part.

(c) The loans 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 for those programs of public assistance specifically enumerated in G.S. 108-54.

(d) Any amount borrowed by a county from the "State Public Assistance Contingency Fund" during one fiscal year shall be repaid to said fund within the next two fiscal years. (1973, c. 1418, s. 2; 1977, c. 1089, s. 2.)

Editor's Note. — The 1977 amendment substituted "approved estimated budget of administrative and program costs for those programs of public assistance enumerated in G.S. 108-54" for "budget for programs of public assistance" in the first sentence of subsection (a), substituted "loans to counties" for "additional funds for counties" and "such programs" for "said programs" in the second sentence of subsection (a), inserted "said" preceding "programs" in the second sentence of subsection (a), substituted "Loans" for "Allotments," "Director of the Division of Social Services, as agent for the Department of Human Resources" for "Secretary of Human Resources," and "loan" for "allotment" in subsection (b), substituted "loans" for "allotments" near the beginning of subsection (c), added "for those programs of public assistance specifically enumerated in G.S. 108-54" to the end of subsection (c), and added subsection (d).

Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provided: "This act shall become effective on July 1, 1974, and shall remain effective through June 30, 1977." This section was amended by Session Laws 1977, c. 1089, s. 3, which deleted "and shall remain effective through June 30, 1977" from the end.

§ 108-55: Repealed by Session Laws 1973, c. 1418, s. 3.

§ 108-56. 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. — Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provided: "This act shall become effective on July 1, 1974, and shall remain effective through June 30, 1977." This section was again amended by Session Laws 1977, c. 1089, s. 3, which deleted "and shall remain effective through June 30, 1977" from the end.

§ 108-57. 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. — Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provided: "This act shall become effective on July 1, 1974, and shall remain effective

through June 30, 1977." This section was again amended by Session Laws 1977, c. 1089, s. 3, which deleted "and shall remain effective through June 30, 1977" from the end.

§ 108-58. Equalizing fund. — The Secretary of Human Resources is authorized and directed to reserve from State appropriations for the programs of public assistance an amount that he finds to be necessary to equalize the burden of taxation in the counties of the State, and to equalize the benefits received by the recipients of public assistance. This amount shall be expended and disbursed solely for the use and benefit of persons eligible for assistance. The amount reserved, to be known as the equalizing fund, shall be distributed among the counties according to their needs under a formula approved by the Social Services Commission so as to produce a fair and just distribution. (1937, c. 288, s. 62; 1943, c. 505, s. 11; 1963, c. 551, ss. 1, 2; c. 599, s. 2; 1965, c. 409; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Part 5. Medical Assistance.

§ 108-59. State fund created. — To provide for an effective medical assistance program and its administration in North Carolina, the Social Services Commission is authorized and empowered to establish from federal, State and county appropriations a fund to be known as the State Fund for Medical Assistance, and to adopt rules and regulations under which payments are to be made out of such fund in accordance with the provisions of this Part. The nonfederal share may be divided between the State and the counties, in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State. If a portion of the nonfederal share is required from the counties, the boards of county commissioners of the several counties shall levy, impose and collect the taxes required for the special purpose of medical assistance as provided in this Part, in an amount sufficient to cover each county's share of such assistance. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§ 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, s.

Session Laws 1975, c. 123, s. 3, provides: "All contracts entered into under the provisions of this act shall be subject to the approval of the Advisory Budget Commission."

Session Laws 1975, c. 123, s. 4, as amended by Session Laws 1977, c. 537, s. 1, provides: "This act shall become effective upon ratification, and shall expire December 31, 1979."

Session Laws 1977, c. 537, s. 2, provides: "Sec. 2. It is the intent of this act to continue in effect the amendments to Chapter 108 of the General Statutes relating to payments from the State Fund for Medical Assistance to such fiscal intermediaries and prepaid health service contractors as may be authorized by the Social Services Commission."

§ 108-61. Acceptance of federal grants. — All of the provisions of the federal Social Security Act providing grants to the states for medical assistance are accepted and adopted, and the provisions of this Part shall be liberally construed in relation to such act so that the intent to comply with it shall be made effectual. Nothing in this Part or the regulations made under its authority shall be construed to deprive a recipient of assistance of the right to choose the licensed provider of the care or service made available under this Part within the provisions of the federal Social Security Act. (1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ 108-61.1: Repealed by Session Laws 1973, c. 476, s. 138.

§ 108-61.2. Subrogation rights; withholding of information a misdemeanor. — (a) To the extent of payments under this Part, the county involved shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of assistance under this Part against any person. It shall be the responsibility of the county commissioners, with such cooperation as they shall require from the county board of social services and the county director of social services, to enforce this section through the services of the county attorney in accordance with attorneys' fee arrangements approved by the Department of Human Resources. The United States and the State of North Carolina shall be entitled to share in each net recovery under this section. Their shares shall be promptly paid 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 to the recipient.

(b) It shall be a misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise. (1973, c. 476, s. 138; c. 1031, s. 1.)

§ 108-61.3. Transfer of real property for purposes of qualifying for medical assistance; periods of ineligibility. — Any person applying for medical assistance only under the Aid to the Aged, Blind, or Disabled categories who has, either by himself or through a legal representative, conveyed, transferred or disposed of any real property within one year prior to the date of making application and any person applying for or receiving medical assistance only under the Aid to the Aged, Blind, or Disabled categories who, either by himself or through a legal representative, conveys, transfers or disposes of any real property during the application process or during any period of continuing eligibility without receiving consideration equivalent to the latest tax value of said property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes, shall, unless shown to the contrary, be presumed to have made such transfer, conveyance or disposition with the intent to qualify or continue to qualify for medical assistance benefits and shall be ineligible to receive such benefits thereafter in accordance with the following schedule or until an amount equivalent to the latest tax value of such property shall have been expended by or in behalf of such person for his maintenance need, including needs for medical care, whichever is sooner;

(1) Property tax value of ten thousand dollars ($10,000) or more — three-year period of ineligibility from date of transfer;

(2) Property tax value of less than ten thousand dollars ($10,000) but more than five thousand dollars ($5,000) — two-year period of ineligibility from date of transfer;

(3) Property tax value of five thousand dollars ($5,000) or less but more than one thousand dollars ($1,000) — one-year period of ineligibility from date of transfer.

Any medical assistance applicant or recipient shall have a right to appeal, in accordance with the provisions of G.S. 108-44, the decision denying or terminating such assistance.

The provisions of this section pertain to persons applying, or on whose behalf application is made, for medical assistance only under the Aid to the Aged, Blind, or Disabled categories. (1977, c. 595, s. 1.)

Editor's Note. — Session Laws 1977, c. 595, s. 2, provides: "This act shall become effective July 1, 1977, and shall only apply to those transfers, conveyances or dispositions made on or after July 1, 1977."

§ 108-61.4. Acceptance of medical assistance constitutes assignment to the State of right to third party insurance benefits; recovery procedure. — (a) By accepting medical assistance, the recipient shall be deemed to have made an assignment to the State of the right to third party insurance benefits to which he may be entitled.

(b) The responsible State agency shall disseminate the contents of this bill to all involved parties; the county government agencies, all Medicaid eligibles, all providers, and all insurance companies doing business in North Carolina.

(c) Since the ratio of dollars collected to State agency staff employed exceeds 10 to one, the responsible State agency will establish a third party resources collection unit that is adequate to assure maximum collection of third party resources. (1977, c. 664.)

Part 6. State-County Special Assistance for Adults.

§ 108-62. Purpose and eligibility. — Assistance may be granted under this Part to persons who would have been eligible under the aid to the aged and disabled category prior to January 1, 1974, but who after such date do not qualify under the Federal Supplemental Security Income Program, including needy spouses, essential persons, certain disabled persons, and those persons needing supplemental payments in boarding homes, rest homes, and convalescent homes for the aged or infirm and those needing attendant care at home. Nothing in this Part should be interpreted so as to preclude any individual county from operating any program of financial assistance using only county funds. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 717, s. 1.)

County Participation in the General Assistance Program Is Optional. — See opinion of Attorney General to Dr. Renee Westcott, Division of Social Services, N.C. Department of Human Resources, 43 N.C.A.G. 182 (1973).

Assistance may be granted under this Part to an individual who becomes eligible for federal supplementary security income program on or after Jan. 1, 1974, and at that time possesses qualifications which would have rendered him eligible under the aid to the aged and disabled category in effect before Jan. 1, 1974. Opinion of Attorney General to Dr. Renee Westcott, Director, Division of Social Services, 43 N.C.A.G. 91 (1973).

§ 108-63. Application procedure. — (a) Applications under this Part shall be made to the county director of social services who, with the approval of the county board of social services and in conformity with the rules and regulations of the Social Services Commission, shall determine whether assistance shall be granted and the amount of such assistance.

(b) The amount of assistance which any eligible person may receive shall be determined with regard to the resources and necessary expenditures of the applicant, in accordance with the appropriate rules and regulations of the Social Services Commission.

(c) Repealed by Session Laws 1973, c. 717, s. 4. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 717, s. 4.)

§ 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.

(b) Allotments shall be made annually by the Commissioner of Social Services, as prescribed by G.S. 108-52, to the counties participating in the program established by this Part.

(c) No allotment shall be used, either directly or indirectly, to replace county appropriations or expenditures. (1949, c. 1038, s. 2; 1955, c. 310, s. 3; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 717, s. 5; 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).

§ 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."

County Participation in the General Assistance Program Is Optional. — See opinion of Attorney General to Dr. Renee Westcott, Division of Social Services, N.C. Department of Human Resources, 43 N.C.A.G. 182 (1973).

Counties Must Consent to Entire General Assistance Program Unless Social Services Commission Provides Otherwise. — See opinion of Attorney General to Dr. Renee Westcott, N.C. Department of Social Services, 42 N.C.A.G. 309 (1973).

Part 7. Foster Home Fund.

§ 108-66. State Foster Home Fund. — (a) The General Assembly shall appropriate funds to the Department of Human Resources for the purpose of providing assistance to needy children who are placed in foster homes by county departments of social services in accordance with the rules and regulations of the Social Services Commission. Such appropriations shall be known and designated as the State Foster Home Fund and, together with county contributions for this purpose, shall be expended to provide for the costs of keeping needy children in foster homes.

(b) No needy child shall be eligible for the benefits provided by this section if he be eligible for foster home care benefits provided by Part 2 of this Article entitled "Aid to Families with Dependent Children."

(c) No benefits provided by this section shall be granted to any needy individual who has passed his eighteenth birthday unless he is less than 21 years of age and is regularly attending and successfully pursuing a course of study leading to a high school diploma or its equivalent; a course of study at the college level; or a course of vocational or technical training designed to fit him for gainful employment. (1937, c. 135, ss. 1-3; 1955, c. 1044, ss. 1, 2; 1957, c. 100, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 645, s. 2.)

Assistance from State Foster Home Fund May Not Be Lawfully Granted to Persons Who Are 18 or More Years of Age and Who Live in Foster Homes. — See opinion of Attorney General to Mr. Clifton Craig, Department of Social Services, 42 N.C.A.G. 8 (1972).

"Foster Home" Includes Various Institutions Which Are Eligible for Assistance. — See opinion of Attorney General to Mr. Clifton M. Craig, Department of Social Services, 41 N.C.A.G. 384 (1971).

ARTICLE 3.

Inspection and Licensing Authority.

Part 1. Licensing of Public Solicitation.

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

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, 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.

§ 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, and assessments 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, 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. Such counsel shall not include any person who only conducts a study to determine the feasibility of undertaking the solicitation of contributions. 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; 1977, c. 877, ss. 1, 2.)

Editor's Note. — The 1977 amendment substituted "fees, dues and assessments" for "fees, dues, assessments, etc." in the first sentence of subdivision (12), deleted "advises" following "manages, carries on" in the first sentence of subdivision (15), and added the present second sentence of subdivision (15).

§ 108-75.4. Authority to license. — (a) The Department is hereby authorized and directed to issue licenses and conditional 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 Department and the payment of the fee prescribed herein.

(c) Each conditional 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 submission to the Department of evidence of substantial improvement towards compliance with all the provisions of this Part and the rules and regulations promulgated hereunder. (1975, c. 747, s. 1; 1977, c. 877, ss. 3, 4.)

Editor's Note. — The 1977 amendment inserted "and conditional licenses" in subsection (a), substituted "by the Department" for "by the Commission" in subsection (b), and added subsection (c).

§ 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. 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 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; 1977, c. 877, s. 5.)

Editor's Note. — The 1977 amendment, in subsection (c), deleted the former third sentence, which read "The Committee shall also recommend to the Commission the forms for license application and other forms required by this Part," and deleted "forms" following "standards, rules, regulations" in the present third sentence.

§ 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 it 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 public accountant for the organization's immediately preceding fiscal year, or a copy of a financial statement audited by an independent 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 twenty-five thousand dollars ($25,000) 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 Department shall be signed by an authorized officer or by an independent 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) Repealed by Session Laws 1977, c. 877, s. 9.

(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; 1977, c. 877, ss. 6-9.)

Editor's Note. — The 1977 amendment, in subsection (a), substituted "it" for "the Commission" in the first sentence of the introductory language, deleted "certified" preceding "public accountant" in two places in the first sentence of subdivision (6), and substituted "twenty-five thousand dollars ($25,000)" for "fifteen thousand dollars ($15,000)" in the second sentence of subdivision (6). The amendment also substituted "Department" for "Commission" and deleted "certified" preceding "public accountant" in subsection (d) and deleted subsection (h), which related to investigation of applicants by the Commission.

§ 108-75.7. Exemptions from licensing. — (a) The following persons shall be exempt from the licensing provisions of this Part:

(1) A 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 religious corporation, trust or organization established for religious purposes shall not be exempt from filing a license application with respect to secular activities, nor shall such religious corporation, trust or organization established for religious purposes be exempt from filing a license application if its financial support is derived primarily from contributions solicited from persons other than its own members, excluding sales of printed or recorded religious materials: 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. A final accounting of receipts and disbursements is published in a newspaper of general circulation in the area in which the greatest amounts of contributions were received;

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 charitable organization which is exempt from the licensing requirements of this Part shall lose such exemption when it employs 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; 1977, c. 877, ss. 10-13.)

Editor's Note. — The 1977 amendment, in subsection (a), deleted "corporation sole or other" preceding "religious corporation" in two places in subdivision (1), inserted the language beginning "nor shall such religious corporation, trust or organization" and ending "excluding sales of printed or recorded religious materials" near the middle of subdivision (1), and rewrote paragraph b of subdivision (4). In subsection (b), the amendment deleted "exempt" preceding "charitable organization" and "a professional fund-raising counsel or" preceding "a professional solicitor" and inserted "which is exempt from the licensing requirements of this act."

§ 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 Department, and shall contain such reasonable information as the Department 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. An individual, including the applicant and a member of the board of directors of the applicant, who is a resident of this State and holds five thousand dollars ($5,000) or more of equity in real property in this State, shall be a satisfactory surety. 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; 1977, c. 877, ss. 14, 15.)

Editor's Note. — The 1977 amendment substituted "Department" for "Commission" in two places in the second sentence of subsection (a) and added the present second sentence to subsection (c).

§ 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. (1975, c. 747, s. 1; 1977, c. 877, s. 16.)

Editor's Note. — The 1977 amendment deleted the former second sentence, which read "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 report said lists."

§ 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 five percent (5%) 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 five percent

(5%) 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; 1977, c. 877, s. 17.)

Editor's Note. — The 1977 amendment substituted "five percent (5%)" for "fifteen percent (15%)" in the second and third sentences of subsection (b).

§ 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 five percent (5%) 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; 1977, c. 877, s. 18.)

Editor's Note. — The 1977 amendment substituted "five percent (5%)" for "fifteen percent (15%)" in subsection (a).

§ 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, 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; 1977, c. 877, s. 19.)

Editor's Note. — The 1977 amendment deleted "after 10 days' written notice mailed to the charitable organization" following "advertising in national media" in the first sentence.

§ 108-75.14: Repealed by Session Laws 1977, c. 877, s. 20.

§ 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) One or more of the statements in the application are not true.
(2) The applicant is or has engaged in a fraudulent transaction or enterprise.
(3) A solicitation would be a fraud upon the public.
(4) An unreasonable percentage of the contributions solicited, or to be solicited, is not applied, or will not be applied to a charitable purpose.
(5) 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.
(6) 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 Secretary has the discretion to allow such higher expense.
(7) The applicant or lessee 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; 1977, c. 877, s. 21.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 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 Secretary, 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 Department, 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 Department 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) and (d) Repealed by Session Laws 1977, c. 877, s. 24. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1975, c. 747, s. 1; 1977, c. 877, ss. 22-24.)

Editor's Note. — The 1977 amendment substituted "Secretary" for "chairman of the Commission" in the third sentence of subsection (a), substituted "Department" for "Commission" in the first and second sentences of subsection (b), and repealed subsections (c) and (d), which related to the power of the Commission to subpoena witnesses, administer oaths and compel the production of necessary records and documents, and which related to judicial review of a final decision of the Commission in a contested case, respectively.

§ 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 falsely 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 falsely 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.

(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; 1977, c. 877, s. 25.)

Editor's Note. — The 1977 amendment, in subsection (e), inserted "falsely" in two places and deleted, at the end of the subsection, "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."

§ 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, the Department shall notify the delinquent 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 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. If any charitable organization, professional fund-raising counsel, or professional solicitor in any other way violates the provisions of this Part or the rules and regulations promulgated hereunder, the Secretary may immediately deny issuance of a license or revoke or suspend the license, effective upon receipt of notice or return of notice undelivered, by mailing notice by registered or certified mail, with return receipt, to the last known address of the charitable organization, professional fund-raising counsel or professional solicitor.

(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 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 aginst 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; 1977, c. 877, ss. 26, 27.)

Editor's Note. — The 1977 amendment, in subsection (a), deleted "or otherwise violates the provisions of this Part or the rules and regulations of the Commission" following "filed with the Department" and "or violating" following "notify the delinquent" in the first sentence and "or if the existing violation is not discontinued" following "other information is not filed" in the second sentence and added the third sentence. The amendment also deleted "or the Commission (who shall have given due notice and full hearing to a charitable organization, professional fund-raising counsel or professional solicitor)" following "advised by the Secretary" near the beginning of subsection (e).

§ 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. Nothing in this section shall be deemed or construed to require that such ordinances or regulations be identical with the provisions of this Part, as amended, and the rules and regulations of the Commission, provided that such ordinances or regulations are substantially as stringent as or require a higher standard of conduct than the provisions of this Part and the rules and regulations of the Commission. (1975, c. 747, s. 1; 1977, c. 877, s. 28.)

Local Modification. — Forsyth: 1977, c. 168.

Editor's Note. — The 1977 amendment added the second sentence.

§ 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 the Internal Revenue Code of 1954, as amended, or regulations promulgated pursuant thereto. (1975, c. 747, s. 4; 1977, c. 877, s. 29.)

Editor's Note. — The 1977 amendment substituted "as defined in the Internal Revenue Code of 1954, as amended, or regulations promulgated pursuant thereto" for "as defined in section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions or any subsequent federal tax laws."

Part 2. Licensing of Institutions.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 108-76. Licensing of maternity homes. — (a) The Department of Human Resources shall inspect and license all maternity homes established in the State under such rules and regulations as the Social Services Commission may adopt.

(b) Facilities subject to the provisions of this section shall include:

(1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and

(2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§ 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.

(b) Any individual or corporation that shall operate a facility subject to license under this section without such license shall be guilty of a misdemeanor.

(c) Facilities which are exempt from the provisions of this section are as follows:

(1) Those which care for one person only;

(2) Those which care for two or more persons, all of whom are related or connected by blood or marriage to the operator of the facility;

(3) Those which make no charges for care, either directly or indirectly;

(4) Those which care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.

(d) This section shall not apply to any institution which is established, maintained or operated by any unit of government; any commercial inn or hotel; or any facility licensed by the Commission for Health Services under the provisions of G.S. 130-9(e), entitled "Nursing Homes." (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S.,

s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 729.)

Editor's Note. — The 1975 amendment added the last four sentences of subsection (a).

Licensing regulation must bear a reasonable relationship to the legitimate State objective of promoting the safety and welfare of the aged or infirm. Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975).

Validity of Regulation Prohibiting Use of an Attic for Sleeping. — See Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975), decided prior to 1975 amendment.

§ 108-78. Licensing of child-caring institutions. — (a) The Department of Human Resources shall inspect and license child-caring institutions in the State under rules and regulations adopted by the Social Services Commission, except those child-caring institutions which are exempt under (c) herein.

(b) Licenses granted to child-caring institutions under this section shall be valid for one year after the date of issuance and may be revoked sooner if the Secretary of Human Resources finds that the public good or the welfare of the children within any institution is not being properly served.

(c) This section shall not apply to any child-caring institution chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation prior to July 1, 1977. Neither shall this section apply to State institutions for the mentally handicapped or to State institutions for the detention of juveniles. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1977, c. 674, ss. 2-6.)

Editor's Note. — The 1977 amendment deleted "private" preceding "child-caring institutions" in subsections (a) and (b), and in subsection (c), added "and which was in operation prior to July 1, 1977" at the end of the first sentence and added the second sentence.

Part 3. Local Confinement Facilities.

§ 108-79. Inspection. — The Department of Human Resources shall, as authorized by G.S. 153-51, inspect regularly all local confinement facilities as defined by G.S. 153-50(4) to determine compliance with the minimum standards for local confinement facilities adopted by the Social Services Commission. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Cross Reference. — As to juvenile detention services, see § 134A-36 et seq.

Editor's Note. — Sections 153-50 and 153-51, referred to in the section above, were repealed by Session Laws 1973, c. 822.

§ 108-80. Approval of new facilities. — The Department of Human Resources shall, as authorized by G.S. 153-51, approve the plans for the

construction or major modification of any local confinement facility. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — Section 153-51, referred to in this section, was repealed by Session Laws 1973, c. 822.

§ 108-81. Failure to provide information. — If the board of commissioners of any county, the chief of police of any municipality, or any officer or employee of any local confinement facility shall fail or refuse to furnish to the Department of Human Resources any information about any local confinement facility which is required by law to be furnished, or shall fail to allow the inspection of any such facility, such board or individual shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C. S., s. 5013; 1957, c. 100, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

§§ 108-82 to 108-86: Repealed by Session Laws 1969, c. 546, s. 1.

§§ 108-87 to 108-90: Reserved for future codification purposes.

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, including 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.)

Editor's Note. — The 1977 amendment added "or, if applicable, Article 1A, Chapter 35" to the end of the third sentence of subsection (c).

Session Laws 1977, c. 725, s. 8, provides in part that the act shall apply only to appointments made on or after March 1, 1978.

§ 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.)

ARTICLE 5.

Family Food Assistance Program.

§ 108-107. Creation of food-stamp program. — The Department of Human Resources may, not later than July 1, 1974, place into operation in each of the several counties of the State a food-stamp program as authorized by the Congress of the United States. The Department of Human Resources is designated as the State agency responsible for the supervision of such programs. The boards of county commissioners through the county departments of social services are held responsible for the administration and operation of the programs. (1973, c. 1441, s. 1.)

§ 108-108. Determination of eligibility. — Any person who believes that he or another person is eligible to receive food-stamp assistance may submit an application for such assistance to the county department of social services in the county in which the applicant resides. The application shall be made in such form and shall contain such information as the Social Services Commission may require. Upon receipt of an application for food-stamp assistance, the county department of social services shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for such assistance and to obtain such other information as the Department of Human Resources may require. Upon the completion of such investigation, the county department of social services shall, within a reasonable period of time, determine eligibility. (1973, c. 1441, s. 1.)

§ 108-109. Appeals. — If an application is not acted upon by the county department of social services within a reasonable time after the filing of the application, or is denied in whole or in part, or if an award of food-stamp assistance is modified or cancelled, the applicant or recipient may appeal to the Department of Human Resources in the manner and form prescribed by the rules and regulations of the Social Services Commission. Each applicant or recipient shall be notified of his right to appeal when applying for assistance and upon any subsequent action of the county department of social services on his case. Any food-stamp-assistance applicant or recipient who is dissatisfied with the final adverse decision of the Department of Human Resources may file a petition within 30 days after receipt of written notice of such decision for a hearing in the Superior Court of Wake County or of the county from which the case arose. Such court shall set the matter for a hearing within 30 days after receipt of such petition and after reasonable written notice to the Department of Human Resources, the county department of social services, and the appellant. The court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to food-stamp assistance under federal and State law, and under the rules and regulations of the Social Services Commission. The court may affirm, reverse or modify the final order of the Department of Human Resources. (1973, c. 1441, s. 1.)

§ 108-110. Penalties for false representation. — (a) Whoever whether provider or recipient knowingly obtains or attempts to obtain or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Article or the regulations issued pursuant thereto, any food coupons to which he is not entitled in the amount of two hundred dollars ($200.00) or less shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court. Whoever knowingly obtains or attempts to obtain or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Article or the regulations issued pursuant thereto, any food coupons to which he is not entitled in an amount more than two hundred dollars ($200.00) shall be guilty of a felony and shall be punished as in cases of larceny.

(b) Whoever presents, or causes to be presented, food coupons for payment or redemption, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Article or the regulations issued pursuant to this Article shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both in the discretion of the court.

(c) Whoever receives any food coupon for any consumable item knowing that such food coupon was procured fraudulently under subsections (a) and/or (b)

of this section shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(d) Whoever receives any food coupon for any consumable item whose exchange is prohibited by the United States Department of Agriculture shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court. (1973, c. 1441, s. 1; 1977, c. 604, s. 2.)

Editor's Note. — The 1977 amendment, in subsection (a), inserted "whether provider or recipient," "making," and "or by failing to disclose material facts" in the first sentence, substituted "in the amount of two hundred dollars ($200.00) or less" for "or food coupons of a greater value than that to which he is justly entitled" in the first sentence, and added the second sentence.

§§ 108-111 to 108-115: Reserved for future codification purposes.

ARTICLE 6.

Economic Opportunity Agencies.

§ 108-116. Purpose. — It shall be the purpose of this Article to authorize and provide financial assistance to economic opportunity agencies in order to reduce levels of poverty and personal and family dependence, and to provide an opportunity and an incentive for greater cooperation among State and local agencies and institutions in attacking poverty, its causes and effects. (1973, c. 1318, s. 1.)

State Government Reorganization. — The State Economic Opportunity Office was transferred to the Department of Natural Resources and Community Development by a Type I transfer by Session Laws 1977, c. 771, s. 11.

§ 108-117. Definitions. — (a) As used in this Article, the term "administrative costs" means costs incurred in the overall management of the agency, the fiscal control of the agency, and the planning, management, monitoring, coordination and evaluation of all programs and activities undertaken by the agency, including, but not limited to, the costs of salaries, travel, and general office expenses.

(b) As used in this Article, the term "operational costs" means costs incurred directly in the delivery of services to the recipient population of particular programs. (1973, c. 1318, s. 2.)

§ 108-118. Designation of administering agency; powers and responsibilities. — The Department of Natural Resources and Community Development ("Department") is directed to carry out the purposes and provisions of this Article. In carrying out this directive, the Department shall:

(1) Make grants to eligible economic opportunity agencies based on compliance with standards and criteria prescribed by OEO and in existence on June 30, 1973.

(2) Evaluate the use of State funds appropriated under this Article to economic opportunity agencies, and submit reports based on that evaluation to the General Assembly. These reports shall also include the Department's evaluation of conditions of economic dependence and poverty among the people of North Carolina, and among the people living in the geographical areas served by the economic opportunity agencies eligible to receive funds under this Article. In the preparation of these evaluations and reports, the Department shall solicit the

comments and testimony of interested citizens of North Carolina including, but not limited to, representatives of the recipient (i.e., economically disadvantaged) populations served by the economic opportunity agencies eligible to receive State funds under this Article.

(3) Provide public information on the status of and the causes and effects of economic insufficiency among the people of the State; and

(4) Assist eligible economic opportunity agencies in securing federal, State, and private resources applicable to efforts aimed at promoting economic self-sufficiency and reducing individual and family economic dependence. (1973, c. 1318, s. 3; 1977, c. 771, s. 11.)

Editor's Note. — The 1977 amendment substituted "Department of Natural Resources and Community Development" for "Department of Human Resources" in the introductory paragraph.

§ 108-119. Eligibility for State financial assistance. — The North Carolina Department of Natural Resources and Community Development is directed to allocate funds provided by this Article for basic administrative costs to agencies which on June 30, 1973, were receiving funds from OEO as community action agencies under 42 U.S.C.A. 2808, or their legal successors ("eligible agencies"). Caswell Action Committee, Inc., and Rockingham County Fund, Inc., are deemed to be eligible agencies for this purpose. (1973, c. 1318, s. 4; 1977, c. 771, s. 11.)

Editor's Note. — The 1977 amendment substituted "Department of Natural Resources and Community Development" for "Department of Human Resources" near the beginning of the section.

§ 108-120. Allocation of State financial assistance. — Funds to eligible agencies shall be allocated as follows:

(1) An eligible agency wishing to receive funds under this Article must apply to the Department for said funds within 60 days after notice of termination of funding provided to said eligible agency for administrative costs by OEO or its successor.

(2) As soon as possible after receiving an application for funding from an eligible agency, the Department shall make, and establish a time schedule for the disbursement of, an initial grant of twenty thousand dollars ($20,000) per annum to that agency.

(3) Within 90 days, but after 60 days from notice of termination by OEO of funding for the administrative costs of eligible agencies, the Department shall add to the foregoing initial grant an additional grant to each applicant agency, the amount to be determined by multiplying twenty thousand dollars ($20,000) times the number of applicant agencies, subtracting that result from eight hundred fifty thousand dollars ($850,000), and apportioning the remainder to each applicant agency according to the ratio of the population of the county or counties served by each applicant agency to the total population of all counties served by all applicant agencies. The latest official U.S. census figures shall be used in making this apportionment. The Department shall immediately notify each applicant agency of the amount of this additional grant, and shall incorporate this amount in the schedule of disbursements.

(4) All funds allocated under provisions of this Article shall be matched at the rate of twenty percent (20%) with nonstate resources either in cash or in kind, except in hardship cases previously designated by OEO as requiring less than twenty percent (20%) matching funds, in which

hardship cases the matching fund percentage rate established by OEO shall apply.

(5) In no event shall any agency's funds made available under provisions of this Article for basic administrative costs exceed fifty percent (50%) of that agency's operational costs.

(6) An otherwise eligible economic opportunity agency may qualify for funds under this Article only after notice of termination of funding provided for administrative costs by OEO or its successor. (1973, c. 1318, s. 5.)

§ 108-121. Authority for State departments to contract with or make grants to eligible economic opportunity agencies. — Whenever any State department deems it advisable, it may enter into contracts with eligible economic opportunity agencies for the organization and provision of services designed to reduce levels of personal and family dependence and to promote economic self-sufficiency and may make grants to these agencies for the costs of providing such services. (1973, c. 1318, s. 6.)

§ 108-122. Eligibility for local government assistance. — Counties, municipalities, and regional organizations may provide assistance, in addition to that provided for in this Article, to eligible economic opportunity agencies, any may enter into contracts with such agencies for the conduct of programs aimed at reducing levels of personal and family dependence and at improving the level of economic self-sufficiency of citizens including but not necessarily limited to programs involving development of community facilities and services, consumer education, manpower development, housing, early childhood development, area economic development, education, public transportation, and health and nutrition. (1973, c. 1318, s. 7.)

§ 108-123. Local government control. — Recognizing that programs administered by economic opportunity agencies should be controlled at the local government level, the boards of directors of all economic opportunity agencies receiving funds pursuant to this Article shall be constituted as follows:

(1) Each community action agency eligible for funding pursuant to G.S. 108-119, shall have a governing board which shall meet the requirements of subdivision (2) of this section.

(2) The board of each community action agency eligible to receive funds pursuant to G.S. 108-119 shall consist of not more than 51 members and shall be so constituted that:

a. Not less than one half nor more than two thirds of the members of the board shall be appointed by the board or boards of county commissioners in the county or counties served by the agency;

b. Not less than one third of the members of the board shall be chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served;

c. The remaining positions on the board, if any, shall be filled by officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community. (1973, c. 1318, s. 8.)

Chapter 109.

Bonds.

ARTICLE 1.

Official Bonds.

§ 109-1. Irregularities not to invalidate. — When any instrument is taken by or received under the sanction of the board of county commissioners, or by any person or persons acting under or in virtue of any public authority, purporting to be a bond executed to the State for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or making of the appointment, or any variance in the penalty or condition of the instrument from the provision prescribed by law, shall be valid and may be put in suit in the name of the State for the benefit of the person injured by a breach of the condition

thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty and condition of the instrument had conformed to the provisions of law: Provided, that no action shall be sustained thereon because of a breach of any condition thereof or any part of the condition thereof which is contrary to law. (1842, c. 61; R. C., c. 78, s. 9; 1869-70, c. 169, s. 16; Code, s. 1891; Rev., s. 279; C. S., s. 324.)

In General. — This section does not have the effect of introducing into an official bond provisions which are not, but ought to have been, inserted in the conditions, so as to extend the liabilities of the obligors; but the purpose is to cure certain defects and irregularities in conferring the office and accepting the instrument, and to maintain its validity as an official undertaking, as far as it goes, notwithstanding the penalty or condition may vary from those prescribed by law. State ex rel. Jordan v. Pool, 27 N.C. 105 (1844); State ex rel. Merrill v. McMinn, 29 N.C. 345 (1847); State ex rel. Murray v. Jones, 29 N.C. 359 (1847); Commissioners of Wake County v. Magnin, 86 N.C. 286 (1882). See also Midgett v. Nelson, 214 N.C. 396, 199 S.E. 393 (1938).

For article concerning contracts and referring generally to this section, see 13 N.C.L. Rev. 65.

Retroactive Operation. — The section had a retroactive operation. State ex rel. Jordan v. Pool, 27 N.C. 105 (1844); State ex rel. Murray v. Jones, 29 N.C. 359 (1847).

Official bonds should be liberally construed and any variance in the condition of such an instrument from the provisions prescribed by the law will usually be treated as an irregularity, in view of this section, but this principle does not abrogate the freedom of contract. City of Washington v. Trust Co., 205 N.C. 382, 171 S.E. 438 (1933).

Nor does this rule preclude the parties from contracting in the bond for liability for a shorter period than the official term of office of the principal. City of Washington v. Trust Co., 205 N.C. 382, 171 S.E. 438 (1933).

Validity as Common-Law or Voluntary Bonds. — A statutory bond, not duly executed, or not conditioned as required by statute, may be sustained as a common-law or voluntary bond. Chambers v. Witherspoon, 10 N.C. 42 (1824); Justices of Cumberland v. Armstrong, 14 N.C. 284 (1831); Justices of Currituck v. Dozier, 14 N.C. 287 (1831); Williams v. Ehringhaus, 14 N.C. 297 (1831); Vanhook v. Barnett, 15 N.C. 268 (1833); Davis v. Somerville, 15 N.C. 382 (1834); State ex rel. Davis v. McAlpin, 26 N.C. 140 (1843); Reid v. Humphreys, 52 N.C. 258 (1859).

County A.B.C. Board as Obligee. — The naming of county A.B.C. board as obligee in bond, rather than State, works no limitation of its character as official bond and affords no escape from its obligations as such. Jordan v. Harris, 225 N.C. 763, 36 S.E.2d 270 (1945).

Name of Constable Omitted. — Where a constable's official bond was signed by the obligors but a blank was left for the name of the constable, the omission was not cured by this section. Grier v. Hill, 51 N.C. 572 (1859).

Failure to Register Constable's Bond. — An irregularity, such as want of registration, will not, under this section, invalidate a constable's bond. Warren v. Boyd, 120 N.C. 56, 26 S.E. 700 (1897).

Failure to Name Conditions in Sheriff's Bond. — Failure to name conditions required by § 162-8, relating to sheriff's bonds, will not, under this section, invalidate the bond given. State ex rel. Bd. of Comm'rs v. Sutton, 120 N.C. 298, 26 S.E. 920 (1897).

Mistake in Name of Ward in Guardian's Bond. — Where, in the order of a county court appointing a guardian, the name Margaret is by mistake inserted as that of the ward instead of Miranda, a bond taken according to the proper requisitions, with the right name recited, will, under the operation of this section, be sustained as an official bond. Shuster v. Perkins, 46 N.C. 325 (1854).

No Penalty Named in Guardian's Bond. — Where defendants signed a bond intending to make it the guardian bond of their principal, but there was no penalty named in the bond the same being filled in subsequent to the signature, it was held that this section does not apply, as it is confined to bonds wherein the amount of penalty varies from that fixed by law, being either more or less than the amount. Rollins v. Ebbs, 137 N.C. 355, 49 S.E. 341 (1904); Rollins v. Ebbs, 138 N.C. 140, 50 S.E. 577 (1905).

Who May Sue. — The chairman of a board of fence commissioners, although not named in the tax collector's bond, may bring suit on the same under this section, when the latter fails to pay the money collected for the erection of fences. Speight v. Staton, 104 N.C. 44, 10 S.E. 86 (1889).

Where a register of deeds issued a license for the marriage of a girl under 18 without the consent of her father, the father is the person injured within the meaning of this section. Joyner v. Roberts, 112 N.C. 111, 16 S.E. 917 (1893).

Cited in Barnes v. Lewis, 73 N.C. 138 (1875).

§ 109-2. Penalty for officer acting without bond. — Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars ($500.00) to the use of the State for each attempt so to exercise his office. (R. C., c. 78, s. 8; Code, s. 1882; Rev., s. 278; C. S., s. 325.)

Quoted in Langley v. Taylor, 245 N.C. 59, 95 S.E.2d 115 (1956).

Stated in Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

§ 109-3. Condition and terms of official bonds. — Every clerk, treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C. S., s. 326.)

Quoted in part in State ex rel. Cain v. Corbett, 235 N.C. 33, 69 S.E.2d 20 (1952).

Stated in Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

§ 109-4. When county may pay premiums on bonds. — In all cases where the officers or any of them named in G.S. 109-3 are required to give a bond, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. The board of commissioners of any county are further authorized and empowered to require individual or blanket bonds for any or all assistants, deputies or other persons regularly employed in the offices of any such county officer or officers, such bond or bonds to be conditioned upon faithful performance of duty, and, in the event of such requirement, to pay the premiums on such individual or blanket bonds. (1937, c. 440; 1953, c. 799.)

Local Modification. — Currituck: 1943, c. 269.

§ 109-5. Annual examination of bonds; security strengthened. — The bonds of the officers named in G.S. 109-3 shall be carefully examined on the first Monday in December of every year, and if it appears that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the insufficient security increased within the limits prescribed by law, and the impaired security shall be made good; but no renewal, or strengthening, or additional security shall increase the penalty of said bond beyond the limits prescribed for the term of office. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C. S., s. 327.)

Cross References. — As to amount of bond of local finance officer, see § 159-29. As to amount of bond of sheriffs, see § 162-8. As to amount of bond of coroners, see § 152-3. As to amount of bond of registers of deeds, see § 161-4.

§ 109-6. Effect of failure to renew bond. — Upon the failure of any such officer to make such renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case is vested in the board of commissioners; but if

otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy. (1869-70, c. 169, s. 2; Code, s. 1875; Rev., s. 309; C. S., s. 328.)

§ 109-7. Justification of sureties. — Every surety on an official bond required by law to be taken or renewed and approved by the board of commissioners shall take and subscribe an oath before the chairman of the board or some person authorized by law to administer an oath, that he is worth a certain sum (which shall be not less than one thousand dollars ($1,000)) over and above all his debts and liabilities and his homestead and personal property exemptions, and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond. But nothing herein shall be construed to abridge the power of the said board of commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix, for examination as to his financial condition or other qualifications as surety. (1869-70, c. 169, s. 3; 1879, c. 207; Code, s. 1876; 1889, c. 7; 1891, c. 385; 1901, c. 32; Rev., s. 310; C. S., s. 329.)

Purpose — Contribution. — The intendment of this section was to provide a statement under oath to show the solvency of the sureties and afford information to the county commissioners under like sanction that the aggregate amount of the bond equaled the penalty required, and does not affect the doctrine of contribution as it relates to the rights of the sureties to contribution between themselves. Board of Comm'rs v. Dorsett, 151 N.C. 307, 66 S.E. 132 (1909).

Cited in State ex rel. Cole v. Patterson, 97 N.C. 360, 2 S.E. 262 (1887).

§ 109-8. Compelling justification before judge; effect of failure. — When oath is made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it is the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. If this evidence so produced fails to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer not exceeding 20 days, to give another bond, fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure of the said officer to give a good bond to the satisfaction of the judge within the 20 days, the judge shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid. (1874-5, c. 120; Code, s. 1885; Rev., s. 316; C. S., s. 330.)

Cited in Mitchell v. Kilburn, 74 N.C. 483 (1876).

§ 109-9. Successor bonded; official bonds considered liabilities. — The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities within the meaning of G.S. 109-7. (1874-5, c. 120, s. 2; Code, s. 1886; Rev., s. 317; C. S., s. 331.)

§ 109-10. Judge to file statement of proceedings with commissioners. — When a vacancy is declared by the judge, he shall file a written statement of

all his proceedings with the clerk of the board of commissioners, to be recorded by him. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 318; C. S., s. 332.)

§ 109-11. Approval, acknowledgment and custody of bonds. — The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by their clerk. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds, for safekeeping. Provided that an official bond executed as surety by a surety company authorized to do business in this State need not be acknowledged upon behalf of the surety when such bond is executed under seal in the name of the surety by an agent or attorney-in-fact by authority of a power of attorney duly recorded in the office of the register of deeds of such county and such bond may be recorded by the register of deeds without an order of probate entered by the clerk of the superior court. (1869-70, c. 169, s. 4; 1879, c. 207, s. 2; Code, s. 1877; Rev., s. 311; C. S., s. 333; 1957, c. 1011.)

§ 109-12. Clerk records vote approving bond; penalty for neglect. — It is the duty of the clerk of the board of commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond, and who vote for such approval. Every clerk neglecting to make such record, besides other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board. (1790, c. 327, P. R.; 1809, c. 777, P. R.; R. C., c. 78, s. 7; 1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C. S., s. 336.)

Editor's Note. — This section serves to show the light in which individual responsibility is regarded by the legislature. See Rawls v. Deans, 11 N.C. 299 (1826).

§ 109-13. When commissioner liable as surety. — Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond. (1869-70, c. 169, s. 6; Code, s. 1879; Rev., s. 313; C. S., s. 335.)

Supplements § 162-12. — This section supplements and somewhat extends the provision of § 162-12, relating to the liability of sureties on a sheriff's bond. Hudson v. McArthur, 152 N.C. 445, 67 S.E. 995 (1910).

Liable to All Persons Injured. — Construing this section and former § 153-9 together, it is held that the county commissioners may be held individually liable by a person sustaining loss by reason of their failure to perform their ministerial duty of requiring bond of a clerk of the superior court. Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

Joinder of Parties and Causes of Action. — See Ellis v. Brown, 217 N.C. 787, 9 S.E.2d 467 (1940).

Cited in State ex rel. Cole v. Patterson, 97 N.C. 360, 2 S.E. 262 (1887), to show how stringently the obligation of seeing to the sufficiency of the bond is enforced.

§ 109-14. Record of board conclusive as to facts stated. — In all actions under G.S. 109-13 a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and the seal of the county, is conclusive evidence of the facts in such record alleged and set forth. (1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C. S., s. 336.)

§ 109-15. Person required to approve bond not to be surety. — No member of the board of commissioners, or any other person authorized to take official bonds, shall sign as surety on any official bond upon the sufficiency of which the board of which he is a member may have to pass. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 315; C. S., s. 337.)

ARTICLE 2.

Bonds in Surety Company.

§ 109-16. State officers may be bonded in surety company. — All persons who are required to give bond to the State of North Carolina to be received by the Governor or by any department of the State government, in lieu of personal security, may give as security for said bond and for the performance of the duties named in the said bond any indemnity or guaranty company authorized to do business in the State of North Carolina, subject to such regulations as the Governor or department may prescribe, and with power in them to demand additional security at any time. Any person presenting any indemnity or guaranty company as surety shall accompany his bond with a statement of the Insurance Commissioner as to the condition of such company as required by law. (1901, c. 754; Rev., s. 272; C. S., s. 338.)

Bond Construed against Company. — A surety bond shall be construed most strongly against the company and most favorably to its general intent and essential purpose. Bank of Tarboro v. Fidelity & Deposit Co., 128 N.C. 366, 38 S.E. 908 (1901), discussing compliance with requirement of notice of default.

§ 109-17. When surety company sufficient surety on bonds and undertakings. — A bond or undertaking by the laws of North Carolina required or permitted to be given by a public official, fiduciary, or a party to an action or proceeding, conditioned for the doing or not doing of an act specified therein, shall be sufficient when it is executed or guaranteed by a corporation authorized in this State to act as guardian or trustee, or to guarantee the fidelity of persons holding places of public or private trust, or to guarantee the performance of contracts, other than insurance policies, or to give or guarantee bonds and undertakings in actions or proceedings.

The bond or undertaking of a corporation having such power shall be sufficient, although the law or regulation in accordance with which it is given requires two or more sureties, or requires the sureties to be residents or freeholders. But the clerk of the superior court may exercise his discretion as to accepting such a corporation's surety on the bonds of fiduciaries or parties to actions or proceedings. (1895, c. 270; 1899, c. 54, s. 45; 1901, c. 706; Rev., s. 273; C. S., s. 339.)

Same Liability as an Individual. — A surety corporation allowed by this section to give guardian bonds is held to the same liability on a bond given by it as an individual would be, and is responsible to the ward when the guardian's failure to properly perform his duties causes loss to the ward's estate. State ex rel. Roebuck v. National Sur. Co., 200 N.C. 196, 156 S.E. 531 (1931).

Cited in Pierce v. Pierce, 197 N.C. 348, 148 S.E. 438 (1929).

§ 109-18. Clerk to notify county commissioners of condition of company. — Each clerk of the superior court shall furnish the chairman of the board of county commissioners of his county with notice of each surety company licensed in this State, and of each surety company whose license has been revoked, in

which any officer of the county has been bonded. (Rev., ss. 295, 4803; C. S., s. 340.)

§ 109-19. Release of company from liability. — A company executing such bond, obligation or undertaking, may be released from its liability or security on the same terms as are or may be by law prescribed for the release of individuals upon any such bonds, obligations or undertakings. (1899, c. 54, s. 48; Rev., s. 274; C. S., s. 341.)

Company May Be Released Only by Getting Off Bond. — Under this section a surety company can be released from its liability on a bond only by getting off the bond. Bank of Tarboro v. Fidelity & Deposit Co., 128 N.C. 366, 38 S.E. 908 (1901).

Defalcations after Expiration of Term of Office. — A surety company is not liable for defalcations committed after the expiration of the term of office to which the bond refers. Blades v. Dewey, 136 N.C. 176, 48 S.E. 627 (1904).

§ 109-20. Company not to plead ultra vires. — Any company which executes any bond, obligation or undertaking under the provisions of this Article is estopped, in any proceeding to enforce the liability which it assumes to incur, to deny its corporate power to execute such instrument or assume such liability. (1899, c. 54, s. 49; 1901, c. 706, s. 1, subsec. 5; Rev., s. 275; C. S., s. 342.)

§ 109-21. Failure to pay judgment is forfeiture. — If a surety company against which a judgment is recovered fails to discharge the same within 60 days from the time such final judgment is rendered, it shall forfeit its right to do business in this State, and the Insurance Commissioner shall cancel its license. (1901, c. 706, s. 1, subsec. 5; Rev., s. 275; C. S., s. 343.)

§ 109-22. On presentation of proper bond officer to be inducted. — Upon presentation to the person authorized by law to take, accept and file official bonds, of any bond duly executed in the penal sum required by law by the officer chosen to any such office, as principal, and by any surety company, as security thereto, whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials (such insurance company having complied with the insurance laws of the State of North Carolina), or by any other good and sufficient security thereto, such bond shall be received and accepted as sufficient, and the principal thereon shall be inducted into office. (1899, c. 54, s. 53; 1901, c. 706, s. 1, subsec. 5; Rev., s. 276; C. S., s. 344.)

Estoppel to Deny Validity of Bond. — Although the failure of the treasurer to sign a bond was an irregularity under this section, both the treasurer and the surety recognized their liability thereon by offering a second bond in substitution, and both were estopped to deny the validity of the first bond on the ground of such irregularity. State ex rel. Board of Comm'rs v. Inman, 203 N.C. 542, 166 S.E. 519 (1932).

§ 109-23. Expense of fiduciary bond charged to fund. — A receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give a bond as such, may include as part of his lawful expenses such sums paid to such companies for such suretyship to the extent of bond premiums actually paid per annum on the account of such bonds as the clerk, judge or court may allow. (1901, c. 706, s. 1, subsec. 5; Rev., s. 277; C. S., s. 345; 1939, c. 382.)

ARTICLE 3.

Mortgage in Lieu of Bond.

§ 109-24. Mortgage in lieu of required bond. — An administrator, executor, guardian, collector or receiver, or an officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by him to the State of North Carolina, conditioned to the same effect as the bond should be, were the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for 30 days. (1874-5, c. 103, s. 2; Code, s. 118; Rev., s. 265; C. S., s. 346.)

Mortgage of Intestate's Property. — A mortgage by an administrator on property of his intestate to which the administrator is heir does not comply with an order to increase the bond as such a mortgage does not increase the penalty. Sellars v. Faulk, 118 N.C. 573, 24 S.E. 430 (1896).

Failure to Record. — The mortgage or deed in trust permitted by this section, to be given in lieu of an official bond, is, as to proper registration, to be regarded as a mortgage, or deed in trust, and accordingly registered as the law requires, construing the statute strictly, as required; and its entry upon the records in the clerk's office as a bond, alone, without recording it in its proper place as a mortgage is insufficient to give notice to, or priority of lien, over a deed of a subsequent purchaser of the land. Hooper v. Tallassee Power Co., 180 N.C. 651, 105 S.E. 327 (1920).

§ 109-25. Mortgage in lieu of security for appearance, costs, or fine. — Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the State of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

No such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause.

All legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale. (1874-5, c. 103, s. 3; Code, s. 120; 1891, c. 425, ss. 1, 2, 3; Rev., s. 266; C. S., s. 347; 1973, c. 108, s. 57.)

Applicability to Justice's Court. — This section, as it read in the Code of 1883, had no application in courts of justices of the peace. Comron v. Standland, 103 N.C. 207, 9 S.E. 317 (1889).

Foreclosure and Sale. — The clerk of the superior court may foreclose a mortgage on land given by plaintiff to secure costs of his action when the costs are awarded against him, or the clerk may report the matter to the court for a decree of sale by himself, the latter being the better practice to insure a safer title and prevent a needless sacrifice. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

When the superior court, in term, acting through the presiding judge, has duly acquired jurisdiction to decree foreclosure, it is his duty to supervise the sale and see that the land brings a fair price; and when such sale has not been made accordingly, he may set aside the sale, and permit the plaintiff to pay the costs properly chargeable against him. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

It is proper for the court to confirm the sale, and possibly it is necessary for him to do so. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

A decree of confirmation of the sale of lands to pay the cost of an action under a mortgage

given to secure them, under this section, may be set aside by the judge during the term of the superior court at which it was entered. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

Cited in State ex rel. Solicitor v. Jenkins, 121 N.C. 637, 28 S.E. 413 (1897).

§ 109-26. Cancellation of mortgage in such proceedings. — Any mortgage given by any person in lieu of bond as administrator, executor, guardian, collector, receiver or as an officer required to give an official bond, or as agent or surety of such person or officer, or in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action which has been registered, when such party as administrator, executor, guardian, collector, or receiver has filed his final account and when the time required by statute for the bond given by any administrator, executor, guardian, collector, or receiver to remain in force for the purpose of action thereon has expired, or when the officer required to give an official bond has fully complied with the conditions of such bond and the time within which suit is allowed by law to be brought thereon has expired, or when the person giving such mortgage in lieu of bond has made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the superior court of the county where such action was pending or where the mortgage in lieu of bond is recorded by entry of "satisfaction" upon the margin of the record where such mortgage is recorded in the presence of the register of deeds, or his deputy, who shall subscribe his name as a witness thereto, and such cancellation shall have the effect to discharge and release all the right, title and interest of the State of North Carolina in and to the property described in such mortgage. (1905, c. 106; Rev., s. 267; C. S., s. 348; 1921, c. 29, ss. 1, 2; 1925, c. 252, s. 1.)

§ 109-27. Validating statute. — All acts heretofore done by the several superior court clerks, cancelling or satisfying any mortgage, or other instruments, herein mentioned and specified are hereby validated. (1925, c. 252, s. 2.)

§ 109-28. Clerk of court may give surety by mortgage deposited with register. — In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the State, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk. (1874-5, c. 103, s. 6; Code, s. 122; Rev., s. 268; C. S., s. 349.)

§ 109-29. Mortgage in lieu of bond to prosecute or defend in civil case. — It is lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking required to be given, at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for 30 days. (1874-5, c. 103, s. 1; Code, s. 117; Rev., s. 269; C. S., s. 350.)

Editor's Note. — For note on the North Carolina public assistance lien law and current constitutional doctrine, see 49 N.C.L. Rev. 519 (1971).

For comment on access of indigents into the civil courtroom, see 49 N.C.L. Rev. 683 (1971).

Section Strictly Observed. — This section is exceptional in its provisions, and must be strictly

observed. Eshon v. Board of Comm'rs, 95 N.C. 75 (1886).

Undertaking on Appeal. — If it be granted that this section applies to an undertaking on appeal, the section was not complied with where the appellant deposited with the clerk a bond due to himself and secured by a mortgage as a substitute for the undertaking. Eshon v. Board of Comm'rs, 95 N.C. 75 (1886).

Section Does Not Require Mortgage. — This section does not authorize the court to require a party to execute a mortgage of real estate in the case therein provided for. It simply allows the party of whom an undertaking may be required in such cases to give such mortgage instead of it, and the former must be for the same amount as the latter. Wilson v. Fowler, 104 N.C. 471, 10 S.E. 566 (1889).

Not Applicable to Justice's Court. — This section has no application in courts of justices of the peace. Comron v. Standland, 103 N.C. 207, 9 S.E. 317 (1889).

Third Person Executing Mortgage for Defendant. — Where a mortgage is given by a third person for the defendant in an action, as is permitted by this section, and the mortgagor subsequently purchases a part of the mortgaged property, it was held, upon the plaintiff's recovering from the defendant, that the mortgagor has no such interest as will allow him to interfere with the plaintiff's rights under his judgment. Ryan v. Martin, 104 N.C. 176, 10 S.E. 169 (1889).

§ 109-30. Affidavit of value of property required. — In all cases where a mortgage is executed, as hereinbefore permitted, it is the duty of the clerk of the court in which it is executed to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given. (1874-5, c. 103, s. 4; Code, s. 121; Rev., s. 270; C. S., s. 351; 1973, c. 108, s. 58.)

§ 109-31. When additional security required. — If, from any cause, the property mortgaged in lieu of a bond becomes of less value than the amount of the bond in lieu of which the mortgage is given, and it so appears upon affidavit of any person having any interest in the matter as a security for which the mortgage was given, it is the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given. (1874-5, c. 103, s. 5; Code, s. 119; Rev., s. 271; C. S., s. 352.)

ARTICLE 4.

Deposit in Lieu of Bond.

§ 109-32. Deposit of cash or securities in lieu of bond; conditions and requirements. — In lieu of any written undertaking or bond required by law in any matter, before any court of the State, the party required to make such undertaking or bond may make a deposit in cash or securities of the State of North Carolina or of the United States of America, of the amount required by law or, in the case of fiduciaries, of the amount of the trust, in lieu of the said undertaking or bond and such deposit shall be subject to all of the same conditions and requirements as are provided for in written undertakings or bonds, in lieu of which such deposit is made. (1923, c. 58; C. S., s. 352(a); 1947, c. 936.)

Editor's Note. — For comment on this section, see 1 N.C.L. Rev. 283; 25 N.C.L. Rev. 384.

ARTICLE 5.

Actions on Bonds.

§ 109-33. Bonds in actions payable to court officer may be sued on in name of State. — Bonds and other obligations taken in the course of any proceeding at law, under the direction of the court, and payable to any clerk, commissioner, or officer of the court, for the benefit of the suitors in the cause, or others having an interest in such obligation, may be put in suit in the name of the State. (R. C., c. 13, s. 11; Code, s. 51; Rev., s. 280; C. S., s. 353.)

Quoted in Lackey v. Pearson, 101 N.C. 651, 8 S.E. 121 (1888).

§ 109-34. Liability and right of action on official bonds. — Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, entry taker, surveyor, sheriff, coroner, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the State, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office. (1793, c. 384, s. 1, P. R.; 1825, c. 9, P. R.; 1833, c. 17; R. C., c. 78, s. 1; 1869-70, c. 169, s. 10; Code, s. 1883; Rev., s. 281; C. S., s. 354; 1973, c. 108, s. 59.)

Cross Reference. — As to surety waiving his rights under §§ 109-33 through 109-35 by appearing and answering in a summary proceeding, see § 109-36 and the note thereto.

Leave of Court Unnecessary. — This section gives in express terms the right to bring one or more suits upon one or more of the bonds to "every injured person," not on leave from the court, but absolutely and unconditionally so soon as the breach occurs, except that it is to be instituted in the name of the State. Boothe v. Upchurch, 110 N.C. 62, 14 S.E. 642 (1892); Reid v. Holden, 242 N.C. 408, 88 S.E.2d 125 (1955).

Sections Construed Together. — This section and § 109-37 relate to the same subject matter, are part of one and the same statute, and must be construed together. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

Remedies against Superior Court Clerks. — North Carolina statutes provide two separate and distinct remedies against clerks of the superior court — one in behalf of the injured individual for a specific fund to which he is entitled or on account of a particular wrong committed against him by the officer, as provided in this section; and one in behalf of the new clerk against his predecessor in office to recover possession of records, books, papers and money in the hands of the outgoing clerk by virtue or under color of his office, as provided for in former § 2-22. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

This section is not repugnant to the provisions of former § 2-22, which required that each successive clerk shall receive from his predecessor all the records, moneys, and property of his office, but only gives an additional remedy for the benefit of individuals who have cause of complaint against an unfaithful clerk of the superior court. Peebles v. Boone, 116 N.C. 57, 21 S.E. 187 (1895). For present provisions similar to former § 2-22, see § 7A-106.

The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. State ex rel. Daniel v. Grizzard, 117 N.C. 105, 23 S.E. 93 (1895).

Person Injured. — The father of a girl under 18, to whom a marriage license has been issued without the father's consent, is the person injured within the meaning of this section. Joyner v. Roberts, 112 N.C. 111, 16 S.E. 917 (1893).

Under this section, claimants of a fund arising from a partition sale are the proper parties to sue on bond of the clerk for failure of the clerk to pay funds turned over to him by the commissioners in partition. Smith v. Patton, 131 N.C. 396, 42 S.E. 849 (1902).

An action can be maintained by the clerk of a superior court in his own name upon the official bond of the sheriff, for the recovery of costs accrued in such court and collected by the

sheriff, and due and payable to said clerk and others. Jackson v. Maultsby, 78 N.C. 174 (1878).

By Virtue or under Color of Office. — The last clause of this section is very comprehensive in its terms, scope and purpose. It, on purpose, enlarges the compass of the conditions of official bonds and their purpose, and the legislature intended by it, it seems, to prevent an evil pointed out in two or three of the cases. There were no adequate reasons why the conditions of official bonds should not extend to and embrace all the official duties of the office, and there were serious ones of justice and policy why they should. All persons interested are bound to accept the official services of such officers, as occasion may require, and they should be made secure in their rights, and have adequate remedy for wrongs done by them. Besides, all public officers should be held to a faithful discharge of their duties as such. It is singular that the clause last recited, notwithstanding a well known evil to be remedied, was not enacted until 1883. It first appears as part of the Code. Now official bonds and the conditions of them embrace and extend to all acts done by virtue or under color of office of the officer giving the bond. Thomas v. Connelly, 104 N.C. 342, 10 S.E. 520 (1889); Kivett v. Young, 106 N.C. 567, 10 S.E. 1019 (1890).

In State ex rel. Wimmer v. Leonard, 68 F.2d 228 (4th Cir. 1934), a sheriff's bond contained a condition limiting the faithful execution of the office to specific duties such as execution of process and in view of this, and the wording of this section, the bond was held to afford no basis for a recovery by a person whom the sheriff wounded while acting in his official capacity.

This section extends the liability on the sheriff's general official bond and imposes liability for wrongful arrest and the use of excessive force in making an arrest under color of office. Price v. Honeycutt, 216 N.C. 270, 4 S.E.2d 611 (1939).

The surety on a bond of a delinquent tax collector is not liable for an arrest made by the collector in order to force the payment of a delinquent tax, since such act of the tax collector is not done under color of his office and does not come within the condition of the bond that he should "well and truly perform all the duties of his said office." Henry v. Wall, 217 N.C. 365, 8 S.E.2d 223, 127 A.L.R. 854 (1940).

The last clause of this section has been held to enlarge the conditions of the official bond to extend to all official duties of the office. State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

Same — Acts Which Should Have Been Performed. — It is true that the clause seems in terms to provide only for acts done by the officer, and not for those which he should do but does not. But it would be putting a very narrow construction on the statute to say that he and his sureties are liable for what he did, but not for what he should have done and did not do, although the damage to the party was equally as great. State ex rel. Daniel v. Grizzard, 117 N.C. 105, 23 S.E. 93 (1895).

This section has been broadly construed over its long history to cover not only acts done by the officer but also acts that should have been done. State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

Same — Illustrative Acts. — Where a clerk appointed the commissioner to make a partition sale, without bond, and on approving his report received and receipted the proceeds as clerk, took out his costs and entered the amount due each heir at law on his docket, and disbursed a portion of said fund to the parties entitled, this would seem to be a receipt of the fund by the clerk "by virtue of his office." The Judges v. Deans, 9 N.C. 93 (1822); McNeill v. Morrison, 63 N.C. 508 (1869); Cox v. Blair, 76 N.C. 78 (1877). But if this were otherwise the clerk received it "as clerk," and so receipted for it. This was certainly a receipt of the money "under color of his office," and, indeed, this is admitted in the answer. The older decisions were made when these words were not in the statute. The clause embraces all cases where the officer received the money in his official capacity, but when he may not be authorized or required to receive the same. In such case the bond is responsible for the safe custody of the fund so paid in. Smith v. Patton, 131 N.C. 396, 42 S.E. 849 (1902), citing Broughton v. Haywood, 61 N.C. 380 (1867); Greenlee v. Sudderth, 65 N.C. 470 (1871); Brown v. Coble, 76 N.C. 391 (1877); Ex parte Cassidey, 95 N.C. 225 (1886); Thomas v. Connelly, 104 N.C. 342, 10 S.E. 520 (1889); Sharpe v. Connelly, 105 N.C. 87, 11 S.E. 177 (1890); Presson v. Boone, 108 N.C. 78, 12 S.E. 897 (1891).

When the clerk of the superior court is appointed receiver of a minor's estate, he takes and holds the funds by virtue of his office of clerk, and his sureties upon his official bond as such officer are liable for any failure of duty on his part in that respect. Boothe v. Upchurch, 110 N.C. 62, 14 S.E. 642 (1892).

Bonds Cumulative. — Official bonds given by an officer during any one term of office are cumulative, and the new bond does not discharge the old case. Oats v. Bryan, 14 N.C. 451 (1832); Bell's Adm'r v. Jasper, 37 N.C. 597 (1843); Poole v. Cox, 31 N.C. 69, 49 Am. Dec. 410 (1848); Moore v. Boudinot, 64 N.C. 190 (1870); Pickens v. Miller, 83 N.C. 544 (1880); Fidelity & Deposit Co. v. Fleming, 132 N.C. 332, 43 S.E. 899 (1903).

Where the surety has renewed the bond of a clerk of the court upon his election to that office a second time, acknowledged its liability and received premiums thereon, its liability is cumulative for all defalcations thereunder, whether for the second term its principal was

continuing to act de facto or de jure. Lee v. Martin, 186 N.C. 127, 118 S.E. 914 (1923).

The first bonds continue to be a security for the discharge of the duties during the whole term, and the new bonds become additional security for the discharge of such of the duties as have not been performed at the time they are given. Poole v. Cox, 31 N.C. 69, 49 Am. Dec. 410 (1848). See also Oats v. Bryan, 14 N.C. 451 (1832); Bell's Adm'r v. Jasper, 37 N.C. 597 (1843).

Action on Bond and on Case. — An action of debt on a sheriff's bond for money collected, and a nonsuit therein, is a sufficient demand to enable the plaintiff to sustain an action on the case for the same cause of action. Fagan v. Williamson, 53 N.C. 433 (1862).

Negligent Conduct of Jailer Imputed to Sheriff. — Under this section the sheriff and the surety on his official bond are liable for the wrongful death of a prisoner resulting from the negligence of the jailer in locking the prisoner, in the weakened condition, in a cell with a person whom the sheriff and the jailer knew to be violently insane, and who assaulted the prisoner during the night, inflicting the fatal injury. Dunn v. Swanson, 217 N.C. 279, 7 S.E.2d 563 (1940). For note on this case, see 19 N.C.L. Rev. 101.

Action on Negligence. — This section, in so many words, provides for the prosecution of a cause of action based on negligence. State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

A prison official is liable when he knows of, or, in the exercise of reasonable care, should anticipate danger to the prisoner, and with such knowledge or anticipation fails to take the proper precautions to safeguard his prisoners. State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

Necessary Parties in Action against Deputy Sheriff. — If the defendant were acting in the capacity of deputy sheriff at the time of the alleged assault and false arrest, he and the surety on his bond, and the sheriff and the surety on his bond, would be proper and necessary parties to the action based on the cause of action for the alleged assault and false arrest. State ex rel. Cain v. Corbett, 235 N.C. 33, 69 S.E.2d 20 (1952).

Applied in Bank of Spruce Pine v. McKinney, 209 N.C. 668, 184 S.E. 506 (1936).

Cited in Midgett v. Nelson, 214 N.C. 396, 199 S.E. 393 (1938); Davis v. Moore, 215 N.C. 449, 2 S.E.2d 366 (1939); Jordan v. Harris, 225 N.C. 763, 36 S.E.2d 270 (1945); State ex rel. West v. Ingle, 269 N.C. 447, 152 S.E.2d 476 (1967).

§ 109-35. Complaint must show party in interest; election to sue officer individually. — Any person who brings suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered; but nothing herein contained shall prevent such person from bringing at his election an action against the officer to recover special damages for his injury. (1793, c. 384, ss. 2, 3, P. R.; R. C., c. 78, s. 2; 1869-70, c. 169, s. 11; Code, s. 1884; Rev., s. 282; C. S., s. 355.)

The relator is the real party in interest in an action brought in the name of the State on an official bond, and he will be so considered in determining the identity of the parties under a plea of res judicata in a subsequent action. Reid v. Holden, 242 N.C. 408, 88 S.E.2d 125 (1955).

Cited in Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

§ 109-36. Summary remedy on official bond. — When a sheriff, coroner, clerk, county or town treasurer, or other officer, collects or receives any money by virtue or under color of his office, and on demand fails to pay the same to the person entitled to require the payment thereof, the person thereby aggrieved may move for judgment in the superior court against such officer and his sureties for any sum demanded; and the court shall try the same and render judgment at the session when the motion shall be made, but 10 days' notice in writing of the motion must have been previously given. (1819, c. 1002, P. R.; R. C., c. 78, s. 5; 1869-70, c. 169, s. 14; 1876-7, c. 41, s. 2; Code, s. 1889; Rev., s. 283; C. S., s. 356; 1973, c. 108, s. 60.)

Remedy Cumulative. — It has never been understood that this cumulative and optional remedy obstructed the bringing of a regular action on the bond, when the injured party preferred to have recourse to it. Lackey v. Pearson, 101 N.C. 651, 8 S.E. 121 (1888).

Justice Has No Jurisdiction. — Since the repeal of § 13 of c. 80 of Battle's Revision it has been decided by repeated adjudications that a justice of the peace has no jurisdiction of an action on a constable's bond. Coggins v. Harrell, 86 N.C. 317 (1882).

To What Officers Applicable. — In Smith v. Moore, 79 N.C. 86 (1878), it was held that the power conferred by this section as it read in the Revised Code of 1856, was confined to the officers named therein, and that there was no way to hold a commissioner appointed to make a judicial sale liable for the proceeds thereof, except by an action instituted by the parties entitled to the money. Subsequent to this decision the words "or other public officer," have been inserted in the section; but applying the ejusdem generis rule it would seem that these words would not include a master in chancery and that the Smith case declares the law as it still stands. See, however, Ex parte Curtis, 82 N.C. 435 (1880), where the court states that a remedy against executrix and clerk and master should have been by summary motion under this section.

Actions by Persons Entitled to Money. — The section gives a summary remedy against public officers only to those entitled to the money, so that a new clerk cannot proceed under it against a former clerk, for not paying office money over to him as his successor. O'Leary v. Harrison, 51 N.C. 338 (1859).

There is no provision in the statute giving a preference to the party or parties who first seek such summary remedy. And, withal, before any claim, preferential or otherwise, can be established under this statute, notice must be given, the court must try the cause, and judgment must be obtained. Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

It was never intended that the mere lodging of a motion under this section established a preference, or right to establish a preference, over other creditors when such other creditors had been guilty of no laches in asserting their claims. Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

Minor Interested in Fund Must Be Represented by Guardian Ad Litem. — Where a judgment for personal injuries in an action prosecuted by the father as next friend for his minor son is paid only in part, it is error for the court on the father's motion under this section to order the clerk to pay the father out of the recovery the entire amount expended by the father for necessary medical treatment of the minor, when the minor is not represented by a disinterested guardian ad litem, since the interests of the father and the minor in the fund are antagonistic. White v. Osborne, 251 N.C. 56, 110 S.E.2d 449 (1959).

Proceedings May Be Consolidated with General Creditor's Suit. — Plaintiff instituted summary proceedings under this section against the clerk of the superior court and the surety on his bond to recover for the clerk's default in failing to return to plaintiff, as ordered by the superior court, moneys deposited with the clerk. Notice and complaint in the proceeding were served on defendants. Thereafter another creditor of the clerk instituted suit in her own behalf and in behalf of all persons similarly situated, and decree was entered appointing a permanent receiver for the clerk, authorizing the receiver to bring suit on the clerk's bonds, and enjoining all creditors of the clerk from instituting any other suit or action against him or on his bonds. In the summary proceeding under this section, the surety on the clerk's bond pleaded the decree affirming receiver in bar to plaintiff's right to judgment, and the trial court dismissed the summary proceeding. It was held that the summary proceeding should have been consolidated with the suit in the nature of a general creditor's bill. Western Carolina Power Co. v. Yount, 205 N.C. 321, 171 S.E. 321 (1933).

Demand Not Necessary. — In a proceeding by the State, against a clerk of the superior court and the surety on his bond to recover sums embezzled by the clerk, the plaintiffs have the right to pursue the summary remedy under this section, upon their motion after due notice, and demand upon the clerk is not necessary. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Waiver by Appearance. — Where a summary proceeding under this section has been instituted against a clerk of the superior court and the surety on his bonds to recover sums embezzled by the clerk, and the surety has entered a general appearance and filed answer, etc., the surety has waived its rights, if any it had, under §§ 109-33 through 109-35, to object that the plaintiffs could not maintain a summary proceeding under this section. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Judgment. — Under this practice, judgment was entered for the amount of the bond, the execution to be satisfied on payment of the sum collected and costs. Fell v. Porter, 69 N.C. 140 (1873). From the language of the opinion in this case, it would seem that at the time of decision the operation of this section had been suspended. — Ed. note.

Where A. obtained a judgment against B., clerk of the superior court, for a sum of money in his hands by virtue of his office, and B. died, and his administrator, upon demand, failed to pay the money, it was held that the court below erred in overruling a motion by the plaintiff for a judgment upon the official bond of the clerk under the provisions of this section. Cooper v. Williams, 75 N.C. 94 (1876).

Notice. — As this section read in Battle's Revision the proceedings were "without other

notice than is given by the delinquency of the officer." See Prairie v. Jenkins, 75 N.C. 545 (1876).

Applied in State v. Sawyer, 223 N.C. 102, 25 S.E.2d 443 (1943).

§ 109-37. Officer unlawfully detaining money liable for damages. — When money received as aforesaid is unlawfully detained by any of said officers, and the same is sued for in any mode whatever, the plaintiff is entitled to recover, besides the sum detained, damages at the rate of twelve per centum (12%) per annum from the time of detention until payment. (1819, c. 1002, s. 2, P. R.; R. C., c. 78, s. 9; 1868-9, c. 169; Code, s. 1890; Rev., s. 284; C. S., s. 357.)

This section must be considered in connection with § 109-36. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

And § 109-34. — This section and § 109-34 relate to the same subject matter and are a part of one and the same statute. They must be construed together. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

This Section and § 109-36 Are Not Applicable to Liquidation of Banks by Commissioner of Banks. — This section and § 109-36 are inapplicable to impose liability for damages in a case where the Commissioner of Banks took over the affairs of a bank which had been theretofore constituted the financial agent of the county and which had county funds on deposit and in its possession. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

The Commissioner of Banks holding a portion of the fund, subject to the orders of the court and for the purpose of liquidation, could not be said to constitute an "unlawful detention," nor should he in his representative capacity be liable in damages as a penalty for so doing. The punishment would not fall upon a defaulting or delinquent public officer, as intended by the statute, but would penalize funds held in trust for all the creditors and stockholders whose stock assessments have helped to contribute. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

Default of Officer Must Be Shown. — In an action to recover the 12% allowed under this section, it is necessary that the plaintiff show some adequate default. Hannah v. Hyatt, 170 N.C. 634, 87 S.E. 517 (1916).

Liability of Surety. — While, as against the principal on the bond of a clerk of the superior court, interest under the statute at the rate of 12% is collectible from the time of defalcation, the amount of the penalty on his bond determines the liability of the surety thereon. State ex rel. Lee v. Martin, 188 N.C. 119, 123 S.E. 631 (1924).

Effect of Waiver of Interest from Date of Defalcation. — Where, in an action against a clerk of the superior court and his surety to recover sums embezzled by the clerk, the State waives the interest from the date of the actual defalcations, but does demand the 12% from the date of the expiration of each term of office; a judgment awarding damages at 12%, under the provisions of this section, on the sums defaulted from the expiration of each term is not error, the amount being within the penalty of the bond. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Interest by Way of Damages. — Whether or not the clerk is entitled to the benefits of this section, in a suit against his precedessor, is not now decided; but, granting that he is not so entitled, the law allows interest by way of damages on money wrongfully detained. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943); State ex rel. Underwood v. Watson, 224 N.C. 502, 31 S.E.2d 465 (1944).

Applied in Windley v. Lupton, 212 N.C. 167, 193 S.E. 213 (1937).

Cited in Wood v. Citizens Bank, 199 N.C. 371, 154 S.E. 623 (1930).

§ 109-38. Evidence against principal admissible against sureties. — In actions brought upon the official bonds of clerks of courts, sheriffs, coroners, or other public officers, and also upon the bonds of executors, administrators, collectors or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which by law would be admissible and competent for or toward proving the same as against him, shall in like manner be admissible and competent as presumptive evidence only against all or any of his sureties who may be defendants with or without him in said actions. (1844, c. 38; R. C., c. 44, s. 10; 1881, c. 8; Code, s. 1345; Rev., s. 285; C. S., s. 358; 1973, c. 108, s. 61.)

Judgments as Evidence — Generally. — In action against an officer and one of the sureties on his official bond, the record of a judgment against the officer, and others of his sureties, in a previous action against them for the same demand, and on the same bond, but in which action the surety in the present action was not a party, is competent evidence to fix the amount due by the officer. Morgan v. Smith, 95 N.C. 396 (1886).

The question how far a judgment or decree is conclusive against a surety of a defendant, or against one who is liable over to a defendant, and who was not a party to the action, is involved in the greatest confusion. Between the intimate relations which exist between such a person and the defendant in the suit, on the one side, and the fundamental principle that no one ought to be bound by proceedings to which he was a stranger, on the other, the court has found it difficult to steer. Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913).

The cases are numerous in which it has been decided that a judgment rendered against a guardian is not, unaided by the statute, admissible as evidence against the surety to his bond. McKellar v. Powell, 11 N.C. 34 (1825).

The same rulings have been made in regard to the sureties to an administration bond. Chairman of Mecklenburg v. Clark, 11 N.C. 43 (1825); Vanhook v. Barnett, 15 N.C. 268 (1833); Governor ex rel. Huggins v. Montford, 23 N.C. 155 (1840); Governor ex rel. McElroy v. Carter, 25 N.C. 338 (1843). So in reference to the liability of his surety to an amercement against the sheriff.

The act of 1844 (this section), however, changed the rule of law, and rendered competent against the sureties to official bonds, and those given by executors, administrators and guardians, whatever evidence would be competent against the principals, and this was declared to be conclusive, where the evidence was a judgment against him, in Brown v. Pike, 74 N.C. 531 (1876); and in Badger v. Daniel, 79 N.C. 386 (1878).

The act of 1881 amended the previous enactment by making the evidence "presumptive only" against the sureties. Moore v. Alexander, 96 N.C. 34, 1 S.E. 536 (1887).

"It seems that our predecessors in office upon this Bench have intimated, and in one case held, that such judgments, unaided by the statute, are inadmissible in evidence against the surety. Moore v. Alexander, 96 N.C. 34, 1 S.E. 536 (1887). But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal prima facie only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense." Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913).

While this section fixed the rule as to actions brought upon the official bonds of clerks of courts, sheriffs, coroners, or other public officers, and also upon the bonds of executors, administrators, collectors, or guardians, the precedents were in hopeless discord as to bonds not covered by the statute, until Associate Justice Brown laid down the rule in Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913). "But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal prima facie only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense." Charleston & W.C. Ry. v. Robert G. Lassiter & Co., 208 N.C. 209, 179 S.E. 789 (1935).

Same — Evidence of Assets as Well as Debts. — See Armistead v. Harramond, 11 N.C. 339 (1826); Brown v. Pike, 74 N.C. 531 (1876); Badger v. Daniel, 79 N.C. 386 (1878); Morgan v. Smith, 95 N.C. 396 (1886).

Same — Section Not Applicable to Tort Action. — The rule that the judgment against the principal in an official or fiduciary bond is presumptive evidence against the sureties under this section does not apply where the action is not on the bond, but in tort. Martin v. Buffaloe, 128 N.C. 305, 38 S.E. 902 (1901).

Same — Judgment Based on Admissions of Principal's Administrator, Where Interests of Administrator and Surety Conflict. — A judgment upon the admissions in the answer of the administrator bank of a deceased county treasurer is not competent in an action by the county commissioners as evidence against the surety on the official bond of the deceased when the bank has been made a party defendant and the surety at once raises the issue as to whether a part of the defalcation was moneys defaulted from the bank when the deceased was acting as its assistant cashier, the interest of the bank and the surety being in conflict, and this section not applying in such cases. Commissioners of Chowan County v. Citizens Bank, 197 N.C. 410, 149 S.E. 380 (1929).

For case recognizing the principle adopted in Commissioners of Chowan County v. Citizens Bank, 197 N.C. 410, 149 S.E. 380 (1929), but holding the rule inapplicable under peculiar facts of case, see Charleston & W.C. Ry. v. Robert G. Lassiter & Co., 208 N.C. 209, 179 S.E. 879 (1935).

Annual account of guardian is competent evidence against him, and presumptive evidence against his sureties. Loftin v. Cobb, 126 N.C. 58, 35 S.E. 230 (1900).

Joinder of Administrator and Sureties. — Under this section the sureties on an administrator's bond are properly joined with the administrator, where it is shown that the administrator received a benefit from a falsified final account by reason of which the plaintiff's judgment against the administrators remained unpaid. State ex rel. Salisbury Morris Plan Co. v. McCanless, 193 N.C. 200, 136 S.E. 371 (1927).

Cited in Pullen v. Heron Mining Co., 71 N.C. 563 (1874); Gurganus v. McLawhorn, 212 N.C. 397, 193 S.E. 844 (1937).

§ 109-39. Officer liable for negligence in collecting debt. — When a claim is placed in the hands of any sheriff or coroner for collection, and he does not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof. (1844, c. 64; R. C., c. 78, s. 3; 1869-70, c. 169, s. 12; Code, s. 1888; Rev., s. 286; C. S., s. 359; 1973, c. 108, s. 62.)

Section Applicable to Claims, Not Executions. — This section applies only to claims placed in the hands of the sheriff or other officer for collection — such claims as are within the jurisdiction of a justice of the peace, and may be collected by judgment and process of execution granted by that magistrate. It does not apply to executions issuing from the superior or other courts of record. The reason for the distinction is clearly and certainly pointed out in McLaurin v. Buchanan, 60 N.C. 91 (1863). The statute, in effect, now is just as it was when that decision was made. Brunhild v. Potter, 107 N.C. 415, 12 S.E. 55 (1890).

What Constitutes Negligence. — The degree of diligence required is that which a prudent man would ordinarily exercise in the management of his own affairs. A constable is not bound to such strict accountability as when process is delivered to him as an officer. Morgan v. Horne, 44 N.C. 25 (1852); Lipscomb v. Cheek, 61 N.C. 332 (1867). Therefore, what constitutes negligence must depend upon the facts in each particular case; five months' delay was held negligence in Nixon v. Bagby, 52 N.C. 4 (1859).

Chapter 110.
Child Welfare.

Article 1.
Child Labor Regulations.

Article 1A.
Exhibition of Children.

Article 2.
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Article 4A.
Interstate Compact on the Placement of Children.

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Interstate Compact on Juveniles.

ARTICLE 1.

Child Labor Regulations.

§ 110-1. Minimum age. — No minor under 16 years of age shall be employed, permitted or allowed to work in, about, or in connection with any gainful occupation at any time: Provided, that minors between 14 and 16 years of age may be employed outside school hours and during school vacations, but not in a factory or in any occupation otherwise prohibited by law; and provided, that minors 12 years of age and over securing a certificate from the Department of Labor, may be employed outside school hours in the sale or distribution of newspapers, magazines or periodicals subject to the provisions of G.S. 110-8 relating to employment of minors in street trades and to such rules and regulations as may be provided under G.S. 95-11. Nothing in this Article shall be construed to apply to the employment of a minor engaged in domestic or farm

work performed under the direction or authority of the minor's parent or guardian. (1937, c. 317, s. 1; 1977, c. 551, s. 1.)

Editor's Note. — The 1977 amendment substituted "minors" for "boys" near the middle of the first sentence.

Session Laws 1977, c. 583, s. 1, provides: "The Commissioner of Labor may waive for any child over 12 years of age any provision of Chapter 110, Article 1, 'Child Labor Regulations,' and authorize the issuance of an employment certificate when:

"(1) He determines that the health or safety of the minor would not be adversely affected,

"(2) The parent, guardian or other person standing in loco parentis consents in writing to the proposed employment.

"(3) The permit issued by the Department of Social Services shall state the particular type of work which may be performed."

Session Laws 1977, c. 583, s. 2, provides that the act shall be null and void after July 1, 1979.

Prior Law. — As to employment of children before the Child Labor Act of 1903, see Ward v. Allen, 126 N.C. 946, 36 S.E. 194 (1900); Fitzgerald v. Alma Furn. Co., 131 N.C. 636, 42 S.E. 946 (1902); Hendrix v. Cotton Mills, 138 N.C. 169, 50 S.E. 561 (1905).

As to employment since the act, see Rolin v. R.J. Reynolds Tobacco Co., 141 N.C. 300, 53 S.E. 891 (1906); Leathers v. Blackwell Durham Tobacco Co., 144 N.C. 330, 57 S.E. 11 (1907); Starnes v. Albion Mfg. Co., 147 N.C. 556, 61 S.E. 525 (1908); Pettit v. Atlantic Coast Line Ry., 156 N.C. 119, 72 S.E. 195 (1911); McGowan v. Ivanhoe Mfg. Co., 167 N.C. 192, 82 S.E. 1028 (1914); Evans v. Dare Lumber Co., 174 N.C. 31, 93 S.E. 430 (1917).

As to employment in messenger or delivery service, see Pettit v. Atlantic Coast Line Ry., 186 N.C. 9, 118 S.E. 840 (1923).

As to mere volunteer injured in performance of simple and ordinary task, see Reaves v. Catawba Mfg. & Elec. Power Co., 206 N.C. 523, 174 S.E. 413 (1934).

§ 110-2. Hours of labor. — No minor under 16 years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than 40 hours in any one week, or more than eight hours in any one day, nor shall any minor under 16 years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after seven o'clock in the evening of any day, or after nine o'clock on days when schools are not in session. No minor over 16 years of age and under 18 years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than 48 hours in any one week, or more than nine hours in any one day, nor shall any minor between 16 and 18 years of age be so employed, permitted or allowed to work before six o'clock in the morning or after 12 o'clock midnight of any day, except minors between the ages of 16 and 18 may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that minors 12 years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of G.S. 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under G.S. 95-11: Provided further, that minors under 18 years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the State Commissioner of Labor may prescribe, up to 12 o'clock midnight; and provided further, that minors employed as telegraph messengers in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours in school of children under 16 employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2; 1951, c. 1187, s. 1; 1967, cc. 173, 764; 1969, c. 962; 1977, c. 551, s. 2.)

Editor's Note. — The 1977 amendment, in the second sentence, substituted "minors" for "boys" in two places and "minors employed as telegraph messengers" for "telegraph messenger boys" in one place.

Violation of Section as Proximate Cause of Injury. — In order to make an employer liable in damages for an injury sustained by an employee being required to work more than eight hours a day in violation of this section, it must be shown that the violation of the statute was a proximate cause of the injury complained of. Williamson v. Old Dominion Box Co., 205 N.C. 350, 171 S.E. 335 (1933).

§ 110-3. Lunch period. — No minor under 16 years of age shall be employed or permitted to work for more than five hours continuously without an interval of at least 30 minutes for a lunch period, and no period of less than 30 minutes shall be deemed to interrupt a continuous period of work. (1937, c. 317, s. 3.)

§ 110-4. Posting of hours. — Every employer shall post and keep conspicuously posted in the establishment wherein any minor under 18 is employed, permitted, or allowed to work, a printed abstract of this Article and a list of the occupations prohibited to such minors, to be furnished by the State Department of Labor. (1937, c. 317, s. 4.)

§ 110-5. Time records. — Every employer shall keep a time book and/or record, which shall state the name of each minor employed, and which shall indicate the number of hours worked by said minor on each day of the week, and the amount of wages paid during each pay period. Such time record shall be kept on file for at least one year after the entry of the record, and shall be open to the inspection of the State Department of Labor. (1937, c. 317, s. 5.)

§ 110-6. Hazardous occupations prohibited for minors under 16. — No minor under 16 years of age shall be employed, permitted or allowed to work on or in connection with power-driven machinery. No minor under 16 years of age shall be employed, permitted or allowed to work in or about or in connection with: construction work of any kind, shipbuilding, mines or quarries, stone-cutting or polishing, the manufacture, transportation or use of explosives or highly inflammable substances, ore-reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops or any other place in which the heating, melting or heat treatment of metals is carried on; lumbering or logging operations, saw or planing mills, pulp or paper mills, or in operating or assisting in operating punch presses or stamping machines, if the clearance between the ram and the die or the stripper exceeds one-fourth inch; power-driven woodworking machinery, cutting machines having a guillotine action, openers, pickers, cards or lappers, power shears, machinery having a heavy rolling or crush-action, corrugating, crimping, or embossing machines, meat-grinding machines, dough brakes or mixing machines in bakeries or cracker-making machinery, grinding, abrasive, polishing or buffing machines: Provided, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools; machinery used in the cold rolling of heavy metal stock, metal plate bending machines, power-driven metal planing machines, circular saws, power-driven laundry or dry-cleaning machinery, oiling, cleaning or wiping machinery or shafting or applying belts to pulleys; or in the operation or repair of elevators or other hoisting apparatus, or as drivers of trucks or other motor vehicles, or in the operation of any unguarded machinery. (1937, c. 317, s. 6.)

"In or about or in Connection with Quarry". — In Campbell Contracting Co. v. Maryland Cas. Co., 21 F.2d 909 (4th Cir. 1927), it is said: "We cannot agree with the contention that a boy operating a hoist, that by means of a cable, pulls cars loaded with stone out of a quarry 150 to 175 feet distant, and whose duty it was upon signal to have the whistle blown, warning of a blast, and whose further duty it was to warn passers-by, was not working 'in or about or in connection with a quarry.' "

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 110-7. Hazardous occupations prohibited for minors under 18. — No minor under the age of 18 years shall be employed, permitted, or allowed to work at any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form, or at work involving exposure to lead or any of its compounds in any form, or at work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin, or at work in spray painting, or in the handling of unsterilized hides or animal or human hair. Nor shall any minor under 18 be employed or permitted to work in, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed, or in a pool or billiard room: Provided, however, that this section shall not prohibit a minor under the age of 18 years from working in any establishment where beer is sold and not consumed on the premises, and to which has been issued only an "off premises" license for the sale of beer. Nor shall any minor under 18 years of age be employed, permitted, or allowed to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. It shall be the duty of the State Department of Labor and the said State Department of Labor shall have power, jurisdiction, and authority, after due notice and after hearings duly held, to issue general or special orders, which shall have the force of law, prohibiting the employment of such minors in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minors. Nothing contained in this Chapter shall be construed to prohibit a minor who is 16 years of age or older from working in a restaurant that has a grade-A rating solely because said establishment has a malt-beverage, wine, spirituous-liquor or other permit issued by the State A.B.C. Board; but a minor as described herein shall not be allowed to serve or dispense malt beverages, wine, or spirituous liquor. (1937, c. 317, s. 7; 1943, c. 670; 1973, c. 758, s. 1; 1977, c. 551, s. 3.)

Editor's Note. — The 1977 amendment deleted the former third sentence, which read: "Nor shall any girl under the age of 18 years be employed, permitted or allowed to work as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivering goods or messages."

Applicable to Establishment with a License under § 18A-31. — See opinion of Attorney General to Mr. W.C. Creel, Commissioner of Labor, 42 N.C.A.G. 220 (1973).

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

Stated in Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

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

Nothing in this section shall be construed to prevent minors over 14 years of age from distributing newspapers, magazines and periodicals on fixed routes, seven days per week: Provided, that such persons shall not be employed nor allowed to work after 8:00 P.M. and before 5:00 A.M., and that the hours of work and the hours in school do not exceed eight in any one day, except minors 12 years of age and over who have secured a certificate from the Department of Labor for the sale or distribution of newspapers, magazines or periodicals: Provided further, that such person shall not be permitted or allowed to work

more than four hours per day nor more than 24 hours per week: Provided further, that nothing in this Article shall be construed to prevent minors 12 years of age and over, upon securing a proper certificate from the Department of Labor, from being employed outside school hours in the sale or distribution of newspapers, magazines and periodicals (where not more than 75 customers are served in one day): Provided, that such minors shall not be employed between the hours of 7:00 P.M. and 6:00 A.M., nor for more than 10 hours in any one week. (1937, c. 317, s. 8; 1977, c. 551, s. 4.)

Editor's Note. — The 1977 amendment, in the first paragraph, substituted "minor under 14 years of age" for "boy under 14 years of age and no girl under 18 years of age" in the first sentence and substituted "No minor" for "No boy" and "that minor" for "he" in the second sentence, and in the second paragraph, substituted "minors" for "male persons" near the beginning of the paragraph and "minors" for "boys" in two places near the middle and one place near the end.

§ 110-9. Employment certificate required. — Before any minor shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation, such minor shall procure and keep in his possession at all times while pursuing such employment an employment certificate in his name and issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and the minor shall be required to procure and keep in his possession at all times while pursuing this employment the employment certificate herein required. (1937, c. 317, s. 9; 1973, c. 649, s. 1.)

Cross Reference. — See Editor's note to § 110-12.

Newsboy Not Employee. — A newsboy engaged in selling papers is not an employee of the newspaper within the meaning of that term as used in the Workmen's Compensation Act, the newsboy not being on the newspaper's payroll and being without authority to solicit subscriptions and being free to select his own methods of effecting sales, although some degree of supervision was exercised by the newspaper. Creswell v. Charlotte News Publishing Co., 204 N.C. 380, 168 S.E. 408 (1933).

§ 110-10. Officers authorized to issue certificates. — The employment certificate required by this Article shall be issued only by county or city directors of social services in such form and under such conditions as may be prescribed by the State Department of Labor. (1937, c. 317, s. 10; 1961, c. 186; 1969, c. 982.)

§ 110-11. Refusal and revocation of employment certificate. — The person designated to issue employment certificates may refuse to grant such certificate, or may revoke such certificate after issuance if, in his judgment, the best interests of the minor would be served by such refusal or revocation. Employer, parent or guardian of the minor whose employment certificate has been refused or revoked may appeal to the Commissioner of Labor. (1937, c. 317, s. 11.)

§ 110-12. Method of issuing employment certificates. — The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desiring employment, and after having approved and filed the following papers:

(1) A promise of employment signed by the prospective employer or by someone duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor, and the

number of hours per day and days per week which said minor shall be employed.

(2) Evidence of age showing that minor is of the age required by this Article, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

a. A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births; or

b. A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or a duly issued North Carolina learner's permit or driver's license; or

c. Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport or transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

d. Repealed by Session Laws 1971, c. 370.

(3) Repealed by Session Laws 1971, c. 368.

(4) A school record signed by the principal of the school which the minor has last attended or by someone duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor.

The employment certificate shall be delivered to the minor for whom it is issued and this certificate shall be valid for the employment described in the promise of employment submitted in accordance with subdivision (1) of this section and for any subsequent employment of the minor. Provided: That the provisions of this act shall not apply to the hazardous occupations prohibited for minors in G.S. 110-6 and 110-7, and the provisions of this act shall not apply to the hazardous occupations as set forth in Child Labor Bulletin No. 101, promulgated under the United States Department of Labor's Bureau of Labor Standards as authorized by Chapter 8 of Title 29 of the United States Code, known as the "Fair Labor Standards Act," as amended. (1937, c. 317, s. 12; 1971, cc. 368, 370; 1973, c. 649, s. 2; 1977, c. 82.)

Editor's Note. — The 1977 amendment added "a duly issued North Carolina learner's permit or driver's license; or" to the end of subparagraph b of subdivision (2).

The words "this act" in the proviso to the last paragraph would seem to refer to the 1973 amendatory act, which also amended §§ 110-9, 110-15 and 110-19.

Prior Law. — For decisions under former law, see Rolin v. R.J. Reynolds Tobacco Co., 141 N.C. 300, 53 S.E. 891 (1906); Williamson v. Old Dominion Box Co., 205 N.C. 350, 171 S.E. 335 (1933).

§ 110-13. Employment certificate as evidence. — Said employment certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the State, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 13.)

§ 110-14. Regular and vacation employment certificates. — Employment certificates shall be of two kinds, regular certificates permitting employment during school hours, and vacation certificates, permitting employment during the school vacation and during the school term at such time as the public schools are not in session. (1937, c. 317, s. 14.)

§ 110-15. Duties of employee in regard to employment certificate. — Every employee receiving an employment certificate shall, after accepting employment and on the first day of employment, surrender his employment certificate to his

employer for the duration of his employment, for the purpose of making the employment certificate readily accessible to any certificate-issuing officer, attendance officer, inspector, or other person authorized to enforce this Article. Upon termination of employment, the employer shall immediately return the employment certificate to the minor. (1937, c. 317, s. 15; 1973, c. 649, s. 3.)

Cross Reference. — See Editor's note to § 110-12.

§ 110-16: Repealed by Session Laws 1971, c. 1231, s. 2.

§ 110-17. State supervision of the issuance of employment certificates. — The State Department of Labor shall prescribe such rules and regulations for the issuance of employment certificates and age certificates as will promote uniformity and efficiency in the administration of this Article. It also shall supply to local issuing officers all blank forms to be used in connection with the issuance of such certificates. Duplicates of each employment or age certificate shall be mailed by the issuing officer to the State Department of Labor within one week after issuance. The State Department of Labor may revoke any such certificate if in its judgment it was improperly issued or if the minor is illegally employed. If the certificate be revoked, the issuing officer and the employer shall be notified of such action in writing, and such minor shall not thereafter be employed or permitted to work until a new certificate has been legally obtained. (1937, c. 317, s. 17.)

§ 110-18. Rules and regulations. — The Commissioner of Labor of North Carolina shall have the power to make such rules and regulations for enforcing and carrying out the provisions of this Article as may be deemed necessary by said Commissioner. (1937, c. 317, s. 18.)

§ 110-19. Inspection and prosecutions. — It shall be the duty of the State Department of Labor and of the inspectors and agents of said State Department of Labor to enforce the provisions of this Article, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said State Department of Labor, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by the Article, and to have access to employment certificates kept in the possession of the employee and such other records as may aid in the enforcement of this Article. School attendance officers are likewise empowered to visit and inspect places where minors may be employed. (1937, c. 317, s. 19; 1971, c. 1231, s. 2; 1973, c. 649, s. 4.)

Cross Reference. — See Editor's note to § 110-12.

§ 110-20. Penalties. — Whoever employs or permits or allows any minor to be employed or to work in violation of this Article, or of any order or ruling issued under the provisions of this Article, or obstructs the State Department of Labor, its officers or agents, or any other persons authorized to inspect places of employment under this Article, and whoever having under his control or custody any minor, permits or allows him to be employed or to work in violation of this Article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00), or imprisonment for not more than 30 days, or both such fine and imprisonment. Each day during which any violation of this Article continues after notice from the State Department of Labor to the proprietor, manager, or other officer of the partnership, firm or corporation, shall constitute a

separate and distinct offense, and the employment of any minor in violation of the Article shall, with respect to each minor so employed, constitute a separate and distinct offense. The penalties specified in this Article may be recovered by the State in an action for debt brought before any court of competent jurisdiction, or through criminal proceedings, as may be deemed proper. (1937, c. 317, s. 20.)

Cited in Swaney v. Peden Steel Co., 259 N.C. 531, 131 S.E.2d 601 (1963).

ARTICLE 1A.

Exhibition of Children.

§ 110-20.1. Exhibition of certain children prohibited. — (a) Except to the extent otherwise provided in subsection (d) of this section, it is unlawful to exhibit publicly for any purpose, or to exhibit privately for the purpose of entertainment, or solely or primarily for the satisfaction of the curiosity of any observer, any child under the age of 18 years who is mentally ill or mentally retarded or who presents the appearance of having any deformity or unnatural physical formation or development, whether or not the exhibiting of the child is in return for a monetary or other consideration.

(b) It is unlawful to employ, use, have custody of, or in any way be associated with any child described in subsection (a) for the purpose of an exhibition forbidden therein, or for one who has the care, custody or control of the child as a parent, relative, guardian, employer or otherwise, to neglect or refuse to restrain the child from participating in the exhibition.

(c) It is unlawful to procure or arrange for, or participate in procuring or arranging for, anything made unlawful by subsections (a) and (b).

(d) This section does not apply to the transmission of an image by television by a duly licensed television station, or to any exhibition by a federal, State, county or municipal government, or political subdivision or agency thereof, or to any exhibition by any corporation, unincorporated association, or other organization organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) Any violation of this Article shall be a misdemeanor which, upon conviction, shall be punished by a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00) or imprisonment for not more than 30 days, or both such fine and imprisonment. Each day during which any violation of this Article continues after notice to the violator, from any county social services director, to cease and desist from any violation of this section shall constitute a separate and distinct offense. Any act or omission forbidden by this Article shall, with respect to each child described therein constitute a separate and distinct offense. (1969, c. 457, s. 1; c. 982.)

Editor's Note. — Pursuant to former § 108-1, "county social services director" has been substituted for "county welfare director" in the second sentence of subsection (e).

Television Coverage of Children in the Children's Unit of Charity Hospital Not Prohibited When Programs Are Prepared for Public or General Benefit or for Purposes of Treatment of Children. — See opinion of Attorney General to Mr. S.S. Haney, 41 N.C.A.G. 590 (1971).

ARTICLE 2.

Juvenile Services.

§ 110-21: Repealed by Session Laws 1973, c. 1339, s. 2.

Cross Reference. — For present provisions as to juvenile services, see §§ 7A-289.1 through 7A-289.7.

§ 110-21.1: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-22. Probation conditions; revocation. — When the court places any child on probation, the court order shall specify the conditions of probation and the period of time the child shall remain on probation. The conditions of probation shall be designed by the court to meet the needs of the child and may include any of the following or such other conditions of probation as the court may order in the best interest of the child:

(1) That the child shall remain on good behavior and not violate any laws;
(2) That the child attend school regularly;
(3) That the child not associate with specified persons or be in specified places;
(4) That the child report to the probation officer as often as required by the probation officer;
(5) That the child make specified financial restitution or pay a fine;
(6) That the child be employed regularly if not attending school.

The court may review the progress of any child on probation at any time during the period of probation. The conditions of probation or the period of time on probation may be modified as may be appropriate in a particular case, provided there is notice and a hearing as provided by Article 23 of Chapter 7A. If a child violates the conditions of his probation, such child, after notice, may be required to appear before the court, and the court may make any disposition of the matter authorized by G.S. 7A-286. At the end of a child's period of probation, the child shall appear after notice of a hearing with the juvenile probation officer so that the court may evaluate the child's need for continued supervision, and the judge may terminate the probation, continue the child on probation under the same or modified conditions for a specified term, or enter such other order as the court may find to be in the best interest of the child. (1919, c. 97, s. 12; C. S., s. 5050; 1969, c. 911, s. 1; 1971, c. 1180, s. 6.)

Cited in In re Frye, 32 N.C. App. 384, 232 S.E.2d 301 (1977).

§ 110-22.1: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-23. Duties and powers of juvenile probation officers. — All juvenile probation officers or family counselors providing services to judges hearing juvenile cases shall have the following powers and duties, as the court may require:

(1) To secure or arrange for such information concerning a case as the court may require before, during or after the hearing;
(2) To prepare written reports for the use of the court;
(3) To appear and testify at court hearings;
(4) To assume temporary custody of a child when so directed by court order;
(5) To furnish each child on probation and his parents with a written statement of his conditions of probation, and to consult with the parents, guardian or custodian so that they may help the child comply with his probation;

(6) To keep informed concerning the conduct and progress of any child on probation or under court supervision through home visits or conferences with the parents, guardian or custodian, and in other ways;
(7) To see that the conditions of probation are complied with by the child, or to bring any child who violates his probation to the attention of the court;
(8) To make periodic reports to the court concerning the adjustment of any child on probation or under court supervision;
(9) To keep such records of his work as the court may require;
(10) To account for all funds collected from children;
(11) To have all the powers of a peace officer in the district;
(12) To provide supervision for a child transferred to his supervision from another court or another state, and to provide supervision for any child released from an institution operated by the Department of Correction when requested by such Department to do so;
(13) To have such other duties as the judge may direct. (1919, c. 97, s. 13; C. S., s. 5051; 1957, c. 100, s. 1; 1969, c. 911, s. 1; 1973, c. 1262, s. 10.)

§ 110-23.1. Juvenile probation officers; nongovernmental employees. — Whenever funds are made available for the purposes of this section, the chief district court judge of any district where family counselor services are not available may, in accordance with rules of the administrative offices of the courts, designate persons other than government employees to act as juvenile probation officers and chief juvenile probation officers, and such persons so designated shall have the same powers, duties, and responsibilities as juvenile probation officers and chief juvenile probation officers otherwise provided for by law. (1971, c. 1134.)

§ 110-24. Requirements for lawful juvenile detention. — It shall be unlawful for any child coming within the provisions of Article 23 of Chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except that a court may detain a child in a jail with a holdover facility for juveniles approved by the Department of Human Resources as meeting the State standards as provided by Part 3, Article 3, Chapter 108 and Article 10, Chapter 153A.

Children who are alleged or adjudicated to be delinquent or undisciplined as defined by Article 23, Chapter 7A, and who require secure custody for the protection of the community or in the best interest of the child may be temporarily detained in a county detention home or a regional detention home as defined by G.S. 134-36 which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the State standards of the Department of Human Resources.

A juvenile detention facility shall be located in a building designed to provide secure custody which meets State standards and shall have such personnel as may be necessary to provide for the supervision and safety of the children being detained. A juvenile detention home shall provide a program for children detained therein which meets the standards of the Department of Human Resources, and such program shall be designed to provide wholesome activities in the best interest of the children placed therein. (1919, c. 97, s. 10; C. S., s. 5048; 1957, c. 100, s. 1; 1967, c. 1207; 1969, c. 911, s. 1; 1973, c. 476, s. 138; c. 1230, s. 3.)

Editor's Note. — Section 134-36 referred to in the second paragraph of this section was rewritten by Session Laws 1975, c. 742. See now G.S. 134A-2.

§ 110-25: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-25.1: Transferred to § 130-58.1 by Session Laws 1969, c. 911, s. 3.

§§ 110-26 to 110-38: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-39: Transferred to § 14-316.1 by Session Laws 1969, c. 911, s. 4.

§§ 110-40 to 110-44: Repealed by Session Laws 1969, c. 911, s. 1.

ARTICLE 2A.

Parental Control of Children.

§ 110-44.1. Child under 18 subject to parents' control. — Notwithstanding any other provision of law, any child under 18 years of age, except as provided in G.S. 110-44.2 and 110-44.3, shall be subject to the supervision and control of his parents. (1969, c. 1080, s. 1.)

Applied in Baker v. Baker, 368 F. Supp. 651 (E.D.N.C. 1973).

Cited in Wheeler v. Goodman, 330 F. Supp. 1356 (W.D.N.C. 1971).

§ 110-44.2. Exceptions. — This Article shall not apply to any child under the age of 18 who is married or who is serving in the armed forces of the United States, or who has been emancipated. (1969, c. 1080, s. 2.)

§ 110-44.3. No criminal liability created. — This Article shall not be interpreted to place any criminal liability on a parent for any act of his child 16 years of age or older. (1969, c. 1080, s. 3.)

§ 110-44.4. Enforcement. — The provisions of this Article may be enforced by the parent, guardian, or person standing in loco parentis to the child by filing a civil action in the district court of the county where the child can be found. Upon the institution of such action by a verified complaint, alleging that the defendant child has left home or has left the place where he has been residing and refuses to return and comply with the direction and control of the plaintiff, the court may issue an order directing the child personally to appear before the court at a specified time to be heard in answer to the allegations of the plaintiff and to comply with further orders of the court. Such orders shall be served by the sheriff upon the child and upon any other person named as a party defendant in such action. At the time of the issuance of the order directing the child to appear the court may in the same order, or by separate order, order the sheriff to enter any house, building, structure or conveyance for the purpose of searching for said child and serving said order and for the purpose of taking custody of the person of said child in order to bring said child before the court. Any order issued at said hearing shall be treated as a mandatory injunction and shall remain in full force and effect until the child reaches the age of 18, or until further orders of the court. Within 30 days after the hearing on the original order, the child, or anyone acting in his behalf, may file a verified answer to the complaint. Upon the filing of an answer by or on behalf of said child, any district court judge holding court in the county or judicial district where said action was instituted shall have jurisdiction to hear the matter, without a jury, and to make findings of fact, conclusions of law, and render judgment thereon. Any aggrieved party may within the time allowed for appeal of civil actions generally appeal to the superior court where trial shall be had without a jury. Appeals from the superior court to the Court of Appeals shall be allowed as in civil actions generally. The district judge issuing the original order or the district judge hearing the matter after answer has been filed shall also have authority to order

that any person named defendant in the order or judgment shall not harbor, keep, or allow the defendant child to remain on said person's premises or in said person's home. Failure of any defendant to comply with the terms of said order or judgment shall be punishable as for contempt. (1969, c. 1080, s. 4.)

Cited in Wheeler v. Goodman, 330 F. Supp. 1356 (W.D.N.C. 1971).

ARTICLE 3.

Control over Child-Caring Facilities.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 110-45. Institution has authority of parent or guardian. — Every indigent child which may be placed in any orphanage, children's home, or child-placing institution in this State, which shall be an institution existing under and by virtue of the laws of this State, shall be under the control of the authorities of such institution so long as, under the rules and regulations of such institution, the child is entitled to remain in the same. The authority of the institution shall be the same as that of a parent or guardian before the child was placed in the institution; but such authority shall extend only to the person of the child. (1917, c. 133, s. 1; C. S., s. 5063.)

§ 110-46. Regulations of institution not abrogated. — Nothing in this Article shall be construed in any way to abrogate any of the rules and regulations of such institutions insofar as the rules and regulations have for their purpose the welfare and protection of the institutions. (1917, c. 133, s. 2; C. S., s. 5064.)

§ 110-47. Enticing a child from institution. — It is unlawful for any person to entice or attempt to entice, persuade, harbor, or conceal, or in any manner induce any indigent child to leave any of the institutions hereinbefore mentioned without the knowledge or consent of the authorities of such institutions. But this Article shall not interfere with a mother's right to her child in case she becomes able to sustain her child; and the county commissioners in the county in which she resides shall in case of doubt have authority to recommend to the institution concerning the child. (1917, c. 133, s. 3; C. S., s. 5065.)

§ 110-48. Violation a misdemeanor. — Any person violating any of the provisions of G.S. 110-45, 110-46 and 110-47 shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1917, c. 133, s. 4; C. S., s. 5066.)

§ 110-49. Permits and licenses must be had by institutions caring for children. — No individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this State for the purpose of giving full-time care to children or for the purpose of placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the

Department of Human Resources. The said Department shall issue such permit recommending said business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in G.S. 108-78(c) shall annually procure a license from the Department of Human Resources, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars ($200.00) or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; C. S., s. 5067; 1931, c. 226, s. 6; 1957, c. 100, s. 1; 1969, cc. 908, 982, 1081; 1973, c. 476, s. 138.)

Inapplicable to Organization Providing Residential Care to Girls between the Ages of 16 and 23. — See Opinion of Attorney General to Dr. Renee Westcott, Commissioner of Department of Social Services, 42 N.C.A.G. 226 (1973).

ARTICLE 4.

Placing or Adoption of Juvenile Delinquents or Dependents.

§ 110-50. Consent required for bringing child into State for placement or adoption. — (a) No person, agency, association, institution, or corporation shall bring or send into the State any child for the purpose of giving his custody to some person in the State or procuring his adoption by some person in the State without first obtaining the written consent of the Department of Human Resources.

(b) The person with whom a child is placed for either of the purposes set out in subsection (a) of this section shall be responsible for his proper care and training. The Department or its agents shall have the same right of visitation and supervision of the child and the home in which it is placed as in the case of a child placed by the Department or its agents as long as the child shall remain within the State and until he shall have reached the age of 18 years or shall have been legally adopted. (1931, c. 226, s. 1; 1947, c. 609, s. 1; 1973, c. 476, s. 138.)

§ 110-51. Bond required. — The Social Services Commission may, in its discretion, require of a person, agency, association, institution, or corporation which brings or sends a child into the State with the written consent of the Department of Human Resources, as provided by G.S. 110-50, a continuing bond in a penal sum not in excess of one thousand dollars ($1,000) with such conditions as may be prescribed and such sureties as may be approved by the Department of Human Resources. Said bond shall be made in favor of and filed with the Department of Human Resources with the premium prepaid by the said person, agency, association, institution or corporation desiring to place such child in the State. (1931, c. 226, s. 2; 1947, c. 609, s. 2; 1969, c. 982; 1973, c. 476, s. 138.)

§ 110-52. Consent required for removing child from State. — No child shall be taken or sent out of the State for the purpose of placing him in a foster home or in a child-caring institution without first obtaining the written consent of the Department of Human Resources. The foster home or child-caring institution in which the child is placed shall report to the Department at such times as the Department may direct as to the location and well-being of such child until he

shall have reached the age of 18 years or shall have been legally adopted. (1931, c. 226, s. 3; 1947, c. 609, s. 3; 1973, c. 476, s. 138.)

Applied in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ 110-53: Repealed by Session Laws 1947, c. 609, s. 4.

§ 110-54: Repealed by Session Laws 1943, c. 753, s. 2.

§ 110-55. Violation of Article a misdemeanor. — Every person acting for himself or for an agency who violates any of the provisions of this Article or who shall intentionally make any false statements to the Social Services Commission or the Secretary of Human Resources or an employee thereof acting for the Department in an official capacity in the placing or adoption of juvenile delinquents or dependents shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars ($200.00) or by imprisonment for not more than six months, or by both such fine and imprisonment. (1931, c. 226, s. 7; 1957, c. 100, s. 1; 1973, c. 476, s. 138.)

Quoted in part in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ 110-56. Definitions. — The term "Department" wherever used in this Article shall be construed to mean the Department of Human Resources. The terms "he" and "his" and "him" wherever used in this Article shall apply to a female as well as a male child. (1931, c. 226, s. 8; 1957, c. 100, s. 1; 1973, c. 476, s. 138.)

Stated in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ 110-57. Application of Article. — None of the provisions of this Article shall apply when a child is brought into or sent into, or taken out of, or sent out of the State, by the guardian of the person of such child, or by a parent, stepparent, grandparent, uncle or aunt of such child, or by a brother, sister, half-brother, or half-sister of such child, if such brother, sister, half-brother, or half-sister is 18 years of age or older. (1947, c. 609, s. 5; 1971, c. 1231, s. 1.)

ARTICLE 4A.

Interstate Compact on the Placement of Children.

§ 110-57.1. Adoption of Compact. — The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as contained in this Article. It is the intent of the General Assembly that Article 4 shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this Compact.

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this Compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities of [or] for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(e) "Appropriate public authorities" as used in Article III shall, with reference to this State, mean the Department of Human Resources and said agency shall receive and act with reference to notices required by Article III.

(f) "Appropriate authority in the receiving state" as used in paragraph (a) of Article V shall, with reference to this State, mean the Secretary of Human Resources.

(g) "Executive head" as used in Article VII means the Governor.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this Compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this Compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this Compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this Compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with

opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this Compact shall designate an officer who shall be general coordinator of activities under this Compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article VIII. Limitations.

This Compact shall not apply to: (a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This Compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this Compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this Compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this Compact shall be liberally construed 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 party 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 party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1971, c. 453, s. 1; 1973, c. 476, s. 138.)

§ 110-57.2. Financial responsibility under Compact. — Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of any other state laws fixing responsibility for the support of children also may be invoked. (1971, c. 453, s. 2.)

§ 110-57.3. Agreements under Compact. — The officers and agencies of this State and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Secretary of Human Resources in the case of the State and of the county director of social services in the case of a county or other subdivision of the State. (1971, c. 453, s. 2; 1973, c. 476, s. 138.)

§ 110-57.4. Visitation, inspection or supervision. — Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the laws of this State shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children. (1971, c. 453, s. 2.)

§ 110-57.5. Compact to govern between party states. — The provisions of Article 4 of Chapter 110 of the General Statutes shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children. (1971, c. 453, s. 2.)

§ 110-57.6. Placement of delinquents. — Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof. (1971, c. 453, s. 2.)

§ 110-57.7. Compact Administrator. — The Governor is hereby authorized to appoint a Compact Administrator in accordance with the terms of said Article VII. (1971, c. 453, s. 2.)

Article 5.

Interstate Compact on Juveniles.

§ 110-58. Execution of Compact. — The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows: The contracting states solemnly agree:

Article I. Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

(1) Cooperative supervision of delinquent juveniles on probation or parole;
(2) The return, from one state to another, of delinquent juveniles who have escaped or absconded;
(3) The return, from one state to another, of nondelinquent juveniles who have run away from home; and
(4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies.

That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions.

That, for the purposes of this Compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the

purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer to whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

Article V. Return of Escapees and Absconders.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, such person may be taken into custody in any other state party to this Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within

such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

Article VI. Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without a requisition in another state party to this Compact under the provisions of Article IV(a) or Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees.

(a) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee

under this Compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs.

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this Compact.

Article IX. Detention Practices.

That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X. Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or

states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided, in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall

(1) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;
(2) Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;
(3) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;
(4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;
(5) Provide for reasonable inspection of such institutions by the sending state;
(6) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and
(7) Make provisions for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid.

That any state party to this Compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this Compact, and may receive and utilize, the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII. Compact Administrators.

That the governor of each state party to this Compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article XIII. Execution of Compact.

That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or [of] execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation.

That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the Compact to the other states party hereto.

The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

Article XV. Severability.

That 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 participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1963, c. 910, s. 1; 1965, c. 925, s. 1.)

State Government Reorganization. — The administration of the Compact was transferred to the Department of Human Resources by § 143A-156 (now repealed), enacted by Session Laws 1971, c. 864.

Opinions of Attorney General. — Mrs. Margaret H. Paris, Supervisor, Family & Childrens' Services Section, Department of Social Services, 40 N.C.A.G. 671 (1969).

Applied in Baker v. Baker, 368 F. Supp. 651 (E.D.N.C. 1973).

§ 110-59. Compact Administrator. — Pursuant to said Compact, the Governor is hereby authorized and empowered to designate an officer who shall be the Compact Administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the Compact. Said Compact Administrator shall serve subject to the pleasure of the Governor. The Compact Administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by this State hereunder. (1963, c. 910, s. 2.)

§ 110-60. Supplementary agreements. — The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the Compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (1963, c. 910, s. 3.)

§ 110-61. Discharging financial obligations imposed by Compact or agreement. — The Compact Administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into thereunder. (1963, c. 910, s. 4.)

§ 110-62. Enforcement of Compact. — The courts, departments, agencies and officers of this State and subdivisions shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. (1963, c. 910, s. 5.)

§ 110-63. Additional procedure for returning runaways not precluded. — In addition to any procedure provided in Articles IV and VI of the Compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State and the other respective party states for the return of any such runaway juvenile. (1963, c. 910, s. 6.)

§ 110-64. Proceedings for return of runaways under Article IV of Compact; "juvenile" construed. — The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of Article IV of the Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. The judge of any court in North Carolina finding that a requisition for the return of a juvenile under the provisions of Article IV of the Compact is in order shall upon request fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of Article IV of the Compact for his own protection and welfare, subject to the order of a court of this State, to enable his return to another state party to the Compact pursuant to a requisition for his return from a court of that state, shall not exceed 30 days. In applying the provisions of Article IV of the Compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word "juvenile" as used in this Article to mean any person who has not reached his or her eighteenth birthday. (1965, c. 925, s. 2; 1971, c. 1231, s. 2; 1977, c. 552.)

Editor's Note. — The 1977 amendment substituted "person who has not reached his or her eighteenth birthday" for "male 16 years of age or under and any female 17 years of age or under" at the end of the section.

§§ 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 6.

Governor's Advocacy Council on Children and Youth.

§§ 110-65, 110-66: Repealed by Session Laws 1977, c. 872, s. 7.

Cross Reference. — For present provisions as to the Governor's Advocacy Council on Children and Youth, see §§ 143B-414 through 143B-416.

§§ 110-67 to 110-70: Repealed by Session Laws 1973, c. 476, s. 182.

§ 110-71: Repealed by Session Laws 1977, c. 872, s. 7.

Cross Reference. — For present provisions as to the Governor's Advocacy Council on Children and Youth, see §§ 143B-414 through 143B-416.

§ 110-72: Repealed by Session Laws 1973, c. 476, s. 182.

§§ 110-73 to 110-84: Reserved for future codification purposes.

ARTICLE 7.

Day-Care Facilities.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 110-85. Legislative intent and purpose. — The General Assembly hereby declares its intent with respect to day care of children:

(1) The State should protect the growing number of children who are placed in day-care facilities or in child-care arrangements when these children are under the supervision and in the care of persons other than their parents, grandparents, guardians or full-time custodians during the day.

(2) This protection should assure that such children are cared for by persons of good moral character, that their physical safety and moral environment are protected, and that the day-care resources conform to minimum standards relating to the health and safety of the children receiving day care.

(3) This protection requires the following elements for a comprehensive approach: mandatory licensing of day-care facilities under minimum standards; promotion of higher levels of day care than required for a license through the development of higher standards which operators may comply with on a voluntary basis; registration of day-care plans which are too small to be regulated through licensing; and a program of education to help operators improve their programs and to develop public understanding of day-care needs and problems. (1971, c. 803, s. 1.)

Cross Reference. — As to privilege license tax on day-care facilities, see § 105-60.

§ 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.

(2) "Day care" includes any child-care arrangement under which a child less than 13 years of age receives care away from his own home by persons other than his parents, grandparents, guardians or full-time custodians.

(3) "Day-care facility" includes any day-care center or child-care arrangement which provides day care on a regular basis for more than four hours per day for more than five children, wherever operated and

whether or not operated for profit, except that the following are not included: public schools; nonpublic schools whether or not accredited by the State Department of Public Instruction, which regularly and exclusively provide a course of grade school instruction to children who are of public school age; summer camps having children in full-time residence; summer day camps; and Bible schools normally conducted during vacation periods.

(4) "Day-care plan" includes any day-care program or child-care arrangement where any person provides day care for more than one child and less than six children, wherever operated, and whether or not operated for profit.

(5) Repealed by Session Laws 1975, c. 879, s. 15.

(6) "License" means a license issued by the Commission to any day-care facility which meets the statutory standards established under this Article.

(7) "Operator" includes the owner, director or other person having primary responsibility for operation of a day-care facility subject to licensing. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, ss. 1-3.)

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 substituted "Commission" for "Board" in two places in subdivision (1) and once in subdivision (6) and repealed subdivision (5), which defined "Director."

The 1977 amendment deleted "on a regular basis for more than four hours per day where a payment, fee or grant is made for care" at the end of subdivision (2). In subdivision (3), the amendment inserted "on a regular basis for more than four hours per day," deleted "and which receives a payment, fee, or grant for any of the children receiving care" near the beginning of the subdivision and made certain other minor changes in wording. The amendment also deleted "and receives a payment, fee or grant for any of the children receiving care" following "six children" in subdivision (4).

Day-Care Facilities Operated by a Public Agency or with Substantial Public Money Support Are Required to Be Licensed. — See opinion of Attorney General to Mr. Clifton M. Craig, Department of Social Services, 41 N.C.A.G. 887 (1972).

A Day-Care Facility Operated by the Armed Forces on a Federal Reservation Is Subject to Licensing under the Child Day-Care Licensing Act unless the Area Is One in which the Federal Government Has Exclusive Jurisdiction. — See opinion of Attorney General to Mr. John Sokol, N.C. Day-Care Licensing Board 42, N.C.A.G. 128 (1972).

§ 110-87: Repealed by Session Laws 1975, c. 879, s. 15.

§ 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.
(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. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment 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.

§ 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:
(1) To administer the licensing program for day-care facilities and the registration system for day-care plans.
(2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.
(3) To employ such administrative personnel and staff as may be necessary to implement this Article where required services, inspections or reports are not available from existing State agencies and units of local government.
(4) To issue a license effective for one year to any day-care facility which meets the standards established by this Article.
(5) To revoke after hearing the license of any day-care facility which ceases to meet the standards established by this Article.
(6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.
(7) To promote and coordinate educational programs and materials for operators of day-care facilities and day-care plans which are designed to improve the quality of day care available in the State, using the

resources of other State and local agencies and educational institutions where appropriate.

(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 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).

§ 110-90.1. Qualification for staff in a day-care plan. — No day-care plan shall be registered if that plan is operated by or employs any person who has been convicted of a crime involving child abuse, child neglect, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotics or other impairing drugs, or who is mentally retarded or mentally ill to an extent that may be injurious to children. (1977, c. 1011, s. 2.)

§ 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 or his authorized agent who is currently approved by the North Carolina Board of Medical Examiners 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 physicial 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 airspace 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; provided, however, that a facility operated in a public school shall be deemed to have adequate fencing 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; 1977, c. 1011, s. 4; c. 1104.)

Editor's Note. — The 1975 amendment 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.

The first 1977 amendment inserted "or his authorized agent who is currently approved by the North Carolina Board of Medical Examiners" near the beginning of the second paragraph of subdivision (1).

The second 1977 amendment added "provided, however, that a facility operated in a public school shall be deemed to have adequate fencing protection" to the end of subdivision (6).

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.

Size of Group and Child-Staff Ratio in Day-Care Facility. — See opinion of Attorney General to Mrs. Karen James, Office of Child Day-Care Licensing, 42 N.C.A.G. 221 (1973).

Child-Staff Ratio Requirements Are Applicable During All Periods of the Day unless Modified by Child Day-Care Licensing Board. — See opinion of Attorney General to Mr. John S. Sokol, Director, Child Day-Care Licensing Board, 42 N.C.A.G. 301 (1973).

§ 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 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) Repealed by Session Laws 1977, c. 929, s. 1. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, s. 4; c. 929, s. 1.)

Editor's Note. — The 1975 amendment 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).

The first 1977 amendment added "but shall be subject to injunction as provided in G.S. 110-104" at the end of the last sentence of former subsection (d).

The second 1977 amendment repealed subsection (d), which related to denial or revocation of licenses.

§ 110-94. Administrative Procedure Act. — The provisions of General Statutes Chapter 150A known as the Administrative Procedure Act shall be applicable to the Child Day-Care Licensing Commission. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 929, s. 2.)

Editor's Note. — The 1975 amendment substituted "Secretary of Administration" and "Secretary" for "Director" and "Commission" for "Board" in the section as it stood before the 1977 amendment.

The 1977 amendment rewrote this section.

§§ 110-95 to 110-97: Repealed by Session Laws 1977, c. 929, s. 1.

Cross References. — As to administrative hearings, see § 150A-23 et seq. As to judicial review of administrative decisions, see § 150A-43 et seq.

§ 110-98. Mandatory license. — It shall be unlawful for any day-care facility to offer or provide day care without being licensed under the provisions of this Article. In order to provide for gradual implementation of the licensing program, each day-care facility shall register with the Board between January 1 and April 1, 1972, which registration shall be valid in lieu of license until the day-care facility is licensed or until December 31, 1972, whichever is earlier, provided that the Board, upon recommendation of the Director, may extend the validity of such registration in individual cases until July 1, 1973, as to any day-care facility which is not licensed by January 1, 1973. (1971, c. 803, s. 1.)

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.

§ 110-98.1. Prima facie evidence of existence of day-care facility. — A child-care arrangement providing day care for more than five children for more than four hours per day on two or more consecutive days shall be prima facie evidence of the existence of a day-care facility. (1977, c. 4, s. 6.)

§ 110-99. Display of license. — Each day-care facility shall maintain its current license displayed in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any grade or rating which may appear on the license. (1971, c. 803, s. 1.)

§ 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 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 substituted "Commission" for "Board" in two places.

§ 110-102. Information for parents. — The Secretary of Administration shall provide to each operator of a day-care facility a summary of this Article for the parents, guardian, or full-time custodian of each child receiving day care in the facility to be distributed by the operator. The summary shall include the name and address of the Secretary of Administration and the address of the Commission. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 1011, s. 3.)

Editor's Note. — The 1975 amendment substituted "Commission" for "Board" in three places and "Secretary of Administration" for "Director" in one place.

The 1977 amendment divided the former provisions of this section into the present first and second sentences by substituting "The" for "which" at the beginning of the present second sentence, substituted "Secretary of

Administration" for "Commission" and "for" for "to be furnished by the operator to" and inserted "day" preceding "care in the facility" in the present first sentence, added "to be distributed by the operator" at the end of the present first sentence, and deleted "in such form as shall be provided by the Commission to all operators" from the end of the present second sentence.

§ 110-103. Penalty. — Any person who violates the provisions of G.S. 110-98 through G.S. 110-102 shall be guilty of a general misdemeanor. (1971, c. 803, s. 1.)

§ 110-104. Injunctive relief. — The Secretary or his designee is empowered to seek injunctive relief in the superior court of the county in which a day-care center is located against the continuing operation of that day-care facility at any time, whether or not any administrative proceedings are pending. The superior court may grant injunctive relief, temporary, preliminary or permanent when there is any violation of this Article, or of the rules and regulations promulgated by the Commission, which threatens serious harm to children in the day-care facility or when a final order to deny or revoke a license has been violated or when a day-care facility is operating without a license. (1977, c. 4, s. 5; c. 929, s. 3; c. 1011, s. 1.)

Editor's Note. — The first 1977 amendment and the second 1977 amendment both added "or when a day-care facility is operating without a license" to the end of the section.

§§ 110-105 to 110-114: Reserved for future codification purposes.

ARTICLE 8.

Child Abuse and Neglect.

§ 110-115. Short title. — This Article may be cited as the Child Abuse Reporting Law. (1971, c. 710, s. 1.)

§ 110-116. Legislative intent and purpose. — The General Assembly recognizes the growing problem of child abuse and neglect and that children do not always receive appropriate care and protection from their parents or other caretakers acting in loco parentis. The primary purpose of requiring reports of child abuse and neglect as provided by this Article is to identify any children suspected to be neglected or abused and to assure that protective services will be made available to such children and their families as quickly as possible to the end such children will be protected, that further abuse or neglect will be prevented, and to preserve the family life of the parties involved where possible by enhancing parental capacity for good child care. (1971, c. 710, s. 1.)

§ 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.

(2) "Caretaker" means any person other than a parent who is acting in loco parentis to a child including but not limited to the following: grandparent, uncle or aunt or any blood relative, step-parent; foster parent; house parent or cottage parent or other person supervising a child in a child-caring institution or any State institution, person having custody by court order, and a guardian.

(3) "Director" means a county director of social services.

(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).

(5) "Professional person" means a physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, physician-resident, intern, a registered or practical nurse, hospital administrator, Christian Science practitioner, medical examiner, coroner, social worker, law-enforcement officer, mental health worker, psychologist, public health worker, or a school teacher, principal, school attendance counselor or other professional personnel in a public or private school or the director or staff person of a licensed day-care center.

(6) "Protective services" means casework or other counseling services to parents or other caretakers as provided or arranged by a director utilizing the staff of the county department of social services or other community resources which are designed to help such parents or other caretakers to prevent child abuse or neglect, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life. (1971, c. 710, s. 1; 1973, c. 1086; 1975, c. 237, ss. 1, 2; 1977, c. 786, s. 1.)

Editor's Note. — The 1975 amendment substituted "18 years" for "16 years" in the introductory language in subdivision (1) and in subdivision (4).

The 1977 amendment added "or the director or staff person of a licensed day-care center" to the end of subdivision (5).

§ 110-118. Reports of child abuse or neglect. — (a) Any professional person who has reasonable cause to suspect that any child is an abused or neglected child, or any other person having knowledge that any child is an abused child, shall report the case of such child to the director of social services of the county where the child resides or is found.

(b) The report of child abuse or neglect may be made orally, by telephone, or it may be written. The report shall include such information as is known to the person making the report, including the name and address of the child; the name and address of the child's parents or other caretakers; the age of the child; the present whereabouts of the child if not at the home address; the nature and extent of the child's injury or condition resulting from abuse or neglect; and any other information which the person making the report believes might be helpful in establishing the cause of the injuries or the condition resulting from abuse or neglect. If the report of child abuse or neglect is made orally or by telephone, the person making such report shall give his name, address, profession if a professional person, and telephone number if such person has a telephone, and the person making such a report shall confirm the information about child abuse or neglect in writing when requested by the director. If the person making the report is a professional person, the report shall also include his professional opinion as to the nature, extent and causes of the injuries or the condition resulting from abuse or neglect.

(c) Anyone who makes a report pursuant to this statute or who testifies in any judicial proceeding resulting from the report shall be immune from any civil or criminal liability that might otherwise be incurred or imposed for complying with the requirements of this statute, unless such person acted in bad faith or with malicious purpose.

(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 and may render necessary medical treatment to 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; 1977, c. 625, s. 2.)

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.

The 1977 amendment inserted "and may render necessary medical treatment to the child" in subdivision (1) in the second paragraph of subsection (d).

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

§ 110-119. Duty of director of social services. — Any director of social services receiving a report of child abuse or neglect shall make a prompt and thorough investigation in order to ascertain the facts of the case and to evaluate the extent of the abuse or neglect.

After investigation and evaluation, the director of social services shall do one of the following, depending upon his findings of abuse or neglect in the particular case:

(1) Unless he for good cause determines such notification to be harmful, the director shall notify the person making the report of knowledge or suspicion that a child is abused or neglected within two working days after initiating the investigation that (i) there is no finding of abuse or neglect or that (ii) the department is taking action to protect the welfare of the child; provided, no notification is required when said person fails to identify himself or herself to the director.

(2) If the investigation reveals abuse or neglect, the director shall decide whether immediate removal of the child or any other children in the home is necessary for the protection of such child or children.
   a. If immediate removal of the child or other children does not seem necessary, the director shall immediately provide or arrange for protective services. If the parents or other caretakers refuse to accept the protective services provided or arranged by the director, the director shall sign a juvenile petition to invoke the juvenile jurisdiction of the district court for the protection of the child or children.
   b. If immediate removal of the child or children seems necessary for the protection of the child or other children in the home, the director shall sign a juvenile petition which alleges the applicable facts to invoke the juvenile jurisdiction of the district court.

(3) If the director finds evidence that a child has been abused, he shall immediately make a report in writing containing his findings along with a copy of the report of child abuse to the district attorney who shall determine whether criminal prosecution is appropriate and who may request the director to sign the appropriate criminal warrant.

(4) The director shall submit a report of the alleged child abuse or neglect to the central registry under the policies adopted by the Social Services Commission.

In performing any of these duties, the county director may utilize the staff of the county department of social services or any other public or private community agencies that may be available. The director may also consult with the available state or local law-enforcement agencies who shall assist in the investigation and evaluation of the seriousness of any report of child abuse or neglect when requested by the director. (1971, c. 710, s. 1; 1973, c. 476, s. 138; c. 1085; 1977, c. 786, s. 2.)

Editor's Note. — The 1977 amendment rewrote subdivision (1).

For comment on release of medical records by North Carolina hospitals, see 7 N.C. Cent. L.J. 299 (1976).

§ 110-120. Immunity of persons reporting. — Any person making a complaint or providing information or otherwise participating in the program authorized by this Article shall be immune from any civil or criminal liability by reason of such action, unless such person acted with malice and without reasonable cause. (1971, c. 710, s. 1.)

§ 110-121. Waiver of privileges. — Neither the physician-patient privilege nor the husband-wife privilege shall be ground for excluding evidence of child abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which a child's abuse or neglect is in issue, nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications. (1971, c. 710, s. 1.)

§ 110-122. Central registry. — The Department of Human Resources shall maintain a central registry of abuse and neglect cases reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same child or of other children in the same family. This data shall be furnished by county directors of social services to the Department of Human Resources and shall be confidential, subject to policies adopted by the Social Services Commission

which provide for its appropriate use for study and research, but in no event shall any data be used at any hearing or court proceeding unless based upon a final judgment of a court of law. (1971, c. 710, s. 1; 1973, c. 476, s. 138.)

§ 110-123. Protective Services Plan. — The Department of Human Resources shall submit to the Governor and General Assembly by January 16, 1979, the Department's plan pursuant to prevention, identification and treatment of child abuse and neglect. The plan shall include a full assessment of the scope, nature and extent of the problem, goals and objectives, program and administrative strategies, existing and needed resources, and proposals for any statutory amendments to Chapter 110, Article 8, "Child Abuse and Neglect." The Department's plan shall be developed in conjunction with appropriate divisions within the Department, other State agencies and organizations outside the Department and with appropriate local community agencies, organizations and citizens concerned with child abuse and neglect. The plan shall delineate the role and responsibility of departmental staff, other professional and lay persons in implementation of the Department's plan. (1977, c. 786, s. 4.)

§§ 110-124 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.)

§ 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.

Article 2.

Aid to the Needy Blind.

Article 3.

Operation of Vending Facilities on State Property.

Editor's Note. — Session Laws 1973, c. 476, s. 143(a), provides that whenever the words "North Carolina State Commission for the Blind" are used or appear in any statute or law of this State, the same shall be deleted and the words "Department of Human Resources" or "Department," as appropriate, shall be inserted in lieu thereof, unless otherwise provided for in the Executive Organization Act of 1973, with the exception that in certain specified references the words "North Carolina State Commission for the Blind" shall be deleted and the words "Commission for the Blind" shall be inserted in lieu thereof. In this Chapter as it stood before the 1973 amendments, the North Carolina State Commission for the Blind was variously referred to as the "North Carolina State Commission for the Blind," the "State Commission for the Blind," or simply as the "Commission." In order to carry out the evident intent of the 1973 act, the codifiers have, in the sections set out herein, substituted references to the Department of Human Resources or the Commission for the Blind, as appropriate, for references to the former North Carolina State Commission for the Blind, even where that agency was not referred to by its full title.

ARTICLE 1.

General Duties of Department of Human Resources.

§§ 111-1 to 111-3: Repealed by Session Laws 1973, c. 476, s. 143.

Cross References. — As to the organization of the Commission for the Blind, see §§ 143B-157 through 143B-160. As to rights of handicapped persons generally, see Chapter 168.

§ 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.

§ 111-5. Information and aid bureaus. — The Department of Human Resources shall maintain or cause to be maintained one or more bureaus of information and industrial aid, the object of which shall be to aid the blind in finding employment and to teach them trades and occupations which may be followed in their own homes, and to assist them in whatever manner may seem advisable to the Department of Human Resources in disposing of the products of their home industry. (1935, c. 53, s. 4; 1973, c. 476, s. 143.)

§ 111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds. — The Department of Human Resources may establish one or more training schools and workshops for employment of suitable blind persons and shall be empowered to equip and maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof, and may cooperate with shops already established. The Department may also pay for lodging, tuition, support and all necessary expenses for blind persons during their training or instructions in any suitable occupation, whether it be in industrial, commercial, or professional or any other establishments, schools or institutions, or through private instruction wherever in the judgment of the Department such instruction or training can be obtained, when in its judgment the training or instruction in question will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had within the State, they may

be arranged for, at the discretion of the Department, outside of the State. The Department may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or equipment to them, and may also assist them in the sale and distribution of their products. Any portion of the funds appropriated to the Department under the provisions of this Chapter providing for the rehabilitation of the blind and the prevention of blindness may, when the Commission for the Blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of G.S. 111-13 to 111-26, and whenever possible such funds may be matched by funds provided by the federal Social Security Act. (1935, c. 53, s. 5; 1937, c. 124, s. 16; 1973, c. 476, s. 143.)

§ 111-6.1. Rehabilitation center for the adult blind. — In addition to other powers and duties granted it by law, the Department of Human Resources is hereby authorized and directed to establish and operate a rehabilitation center for the blind for the purpose of assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.

The Commission shall make all rules and regulations necessary for this purpose and the Department is hereby authorized to enter into any agreement or contract; to purchase or lease property, both real and personal, accept grants and gifts of whatever nature, and to do all other things necessary to carry out the intent and purposes of such a rehabilitation center.

The Department of Human Resources is hereby authorized to receive grants-in-aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for the North Carolina blind, under the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190). Visually handicapped persons as defined in G.S. 111-11, who are physically present in North Carolina may enjoy the benefits of this section or any other related rehabilitation benefits under the Barden-Rehabilitation Act. (1945, c. 698; 1951, c. 319, s. 4; 1971, c. 1215, s. 2; 1973, c. 476, s. 143.)

§ 111-7. Promotion visits. — The Department of Human Resources may ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the Department of Human Resources may deem advisable. (1935, c. 53, s. 6; 1973, c. 476, s. 143.)

§ 111-8. Investigations; eye examination and treatment. — It shall be the duty of this [the] Department of Human Resources to continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are preventable and to inaugurate and cooperate in any such measure for the State of North Carolina as may seem wise. The Department of Human Resources may arrange for the examination of the eyes of the individual blind and partially blind persons and may secure and pay for medical and surgical treatment for such persons whenever in the judgment of a qualified opthalmologist the eyes of such person may be benefited thereby. (1935, c. 53, s. 7; 1973, c. 476, s. 143.)

§ 111-8.1. Certain eye examinations to be reported to Department of Human Resources. — Whenever, upon examination at a clinic, hospital, or other institution, or elsewhere by a physician, optometrist or other person examining eyes any person is found to have no vision or vision with glasses which is so defective as to prevent the performance of ordinary activities for which eyesight is essential, the physician, the superintendent of such institution or other person

who conducted or was in charge of the examination shall within 30 days report the results of the examination to the Department of Human Resources. (1945, c. 72, s. 3; 1973, c. 476, s. 143.)

§§ 111-9, 111-10: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-11. Definition of visually handicapped person. — For purpose of this Chapter, visually handicapped persons are those persons who are totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential. (1935, c. 53, s. 10; 1939, c. 124; 1971, c. 1215, s. 3.)

§ 111-12: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-12.1. Acceptance of private contributions for particular facilities authorized. — In addition to other powers and duties granted it by law, the Department of Human Resources is hereby authorized to accept contributions of funds made by any private individual, agency or organization even though a condition of the contribution may be that the funds be utilized for the establishment of a particular public or private nonprofit workshop, rehabilitation center or other facility established for the purpose of providing training or employment for eligible blind persons. (1965, c. 906, s. 1; 1973, c. 476, s. 143.)

§ 111-12.2. Contributions treated as State funds to match federal funds. — The Department of Human Resources is further authorized to treat any funds received in accordance with G.S. 111-12.1 as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the establishment of such facilities. (1965, c. 906, s. 2; 1973, c. 476, s. 143.)

§ 111-12.3. Rules and regulations as to receiving and expending contributions. — The Department of Human Resources shall make all rules and regulations necessary for the purpose of receiving and expending any funds mentioned in G.S. 111-12.1 to 111-12.3 which are consistent with the principle of obtaining maximum federal participation and in accordance with established budget procedures of the North Carolina Department of Administration. (1965, c. 906, s. 3; 1973, c. 476, s. 143.)

§ 111-12.4: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-12.5. Reserve and operating capital fund. — Funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor organization not exceeding one hundred thousand dollars ($100,000) shall be retained by the Department of Human Resources as a reserve and operating capital fund to be expended by the Department of Human Resources for its lawful purposes and objectives in accordance with this Chapter. (1967, c. 1214; 1973, c. 476, s. 143.)

§ 111-12.6. Disposition of funds deposited with or transferred to State Treasurer. — All funds required under this Article to be deposited with or which have been heretofore transferred to the State Treasurer by the Bureau of Employment of the Department of Human Resources, and all future net earnings and accumulations of said Bureau or its successor, other than the one hundred thousand dollars ($100,000) reserve fund herein provided for, from whatever source or sources shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State Treasurer shall be invested and the income from corpus shall inure to the sole benefit of the Department of Human Resources. The income and corpus shall be expended for services to and for the benefit of visually handicapped persons in North Carolina upon recommendation of the Commission for the Blind, by and with the approval of the Governor as the Director of the Budget. (1967, c. 1214; 1973, c. 476, s. 143.)

ARTICLE 2.

Aid to the Needy Blind.

§ 111-13. Administration of assistance; objective standards for personnel; rules and regulations. — The Department of Human Resources shall be charged with the supervision of the administration of assistance to the needy blind under this Article, and said Department shall establish objective standards for personnel to be qualified for employment in the administration of this Article, and said Commission for the Blind shall make all rules and regulations as may be necessary for carrying out the provisions of this Article, which rules and regulations shall be binding on the boards of county commissioners and all agencies charged with the duties of administering this Article. (1937, c. 124, s. 2; 1973, c. 476, s. 143.)

§ 111-14. Application for benefits under Article; investigation and award by county commissioners. — Any person claiming benefit under this Article, shall file with the commissioners of the county in which he or she is residing an application in writing, in duplicate, upon forms prescribed by the Department of Human Resources, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State of North Carolina and who is actively engaged in the treatment of diseases of the human eye, or by an optometrist, whichever the individual may select, to the effect that the applicant is blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. Such application may be made on the behalf of any such blind person by the Department of Human Resources, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in the said application, and any other facts that are deemed necessary, and may at any time, within their discretion, require an additional examination of the applicant's eyes by an opthalmologist designated by the Department of Human Resources. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the Commission for the Blind, not inconsistent with this Article and in accordance with the further provisions hereof. (1937, c. 124, s. 3; 1939, c. 124; 1951, c. 319, s. 1; 1957, c. 674; 1973, c. 476, s. 143.)

Editor's Note. — For comment on the enactment of this Article and its application, see 15 N.C.L. Rev. 369.

§ 111-15. Eligibility for relief. — Blind persons having the following qualifications shall be eligible for relief under the provisions of this Article:

(1) Whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential; and

(2) Who are unable to provide for themselves the necessities of life and who have insufficient means for their own support and who have no relative or relatives or other persons in this State able to provide for them who are legally responsible for their maintenance; and

(3) Who, at the time his application is filed, is living in the State of North Carolina voluntarily with the intention of making his home in the State and not for a temporary purpose.

(4) Who are not inmates of any charitable or correctional institution of this State or of any county or city thereof: Provided, that an inmate of such charitable institution may be granted a benefit in order to enable such person to maintain himself or herself outside of an institution; and

(5) Who are not publicly soliciting alms in any part of the State, and who are not, because of physical or mental condition, in need of continuing institutional care. Provided, that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard such earned income as will enable said agency to receive the maximum grants from the federal government for such purpose. (1937, c. 124, s. 4; 1951, c. 319, s. 3; 1961, c. 666, s. 1; 1971, c. 1215, s. 1.)

Cross Reference. — For provision that assistance received from a governmental agency, or from a civic or charitable organization, shall not be considered in determining the amount of assistance to be paid under this Chapter, see § 108-24.1.

§ 111-16. Application for aid; notice of award; review. — Promptly after an application for aid is made to the board of county commissioners under this Article the Department of Human Resources shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the Department of Human Resources and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the Commission for the Blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the Commission for the Blind. Notice of such appeal must be given in writing to the board of county commissioners, and within 30 days after the receipt of such notice the board of county commissioners shall transmit to the Department of Human Resources copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the Commission for the Blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the Commission for the Blind shall hear the said appeal under such rules and regulations not inconsistent with this Article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said Commission for the Blind, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive director of the Department of Human Resources, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases where an appeal shall have been taken by the applicant, the Commission for the Blind shall carefully examine such award or decision, as the case may be, and shall in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county

commissioners and the applicant of such action; and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina Department of Human Resources shall make any determination increasing or decreasing the award allowing or disallowing the same, not inconsistent with the rules and regulations promulgated by the Commission for the Blind, the applicant or board of county commissioners shall have the right, within 10 days from notice thereof, to have such order reviewed by the Commission for the Blind. The procedure in such cases shall be as provided in the section on appeals to the Commission by the applicant. (1937, c. 124, s. 5; 1971, c. 603, s. 1; 1973, c. 476, s. 143.)

§ 111-17. Amount and payment of assistance; source of funds. — When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this Article, as provided in G.S. 111-14, they shall order necessary relief to be granted under the rules and regulations prescribed by the Commission for the Blind, to be paid from county, State and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July 1, 1937, and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the Department of Human Resources, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this Article and the total amount of such county's part thereof required to be paid by such county. Each county shall make appropriations for the purposes of this Article in an amount sufficient to cover its share of aid to the blind and may fund them by levy of property taxes pursuant to G.S. 153A-149 and by the allocation of other revenues whose use is not otherwise restricted by law. This provision is mandatory on each county in the State. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing provisions. No funds shall be allocated to any county by the Department of Human Resources until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six percent (6%), and provision for payment thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the State shall cause to be transmitted to the State Treasurer their share of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July 1, 1937. The State Treasurer shall deposit said funds and credit same to the account of the Department of Human Resources to be employed in carrying out the provisions of this Article.

Within the limitations of the State appropriation, the maximum payment for aid to the blind is to be such as will make possible maximum matching funds by the federal government. (1937, c. 124, s. 6; 1961, c. 666, s. 3; 1973, c. 476, s. 143; c. 803, s. 11.)

Cited in Atlantic Coast Line Ry. v. Beaufort County, 224 N.C. 115, 29 S.E.2d 201 (1944).

§ 111-18. Payment of awards. — After an award to a blind person has been made by the board of county commissioners, and approved by the Department of Human Resources the Department of Human Resources shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the Department of Human Resources shall determine. Such payment shall be made by warrant of the State Auditor, drawn upon such funds in the hands of the State Treasurer, at the instance and request and upon a proper voucher signed by the Secretary of Human Resources, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure.

It is intended that awards paid to recipients under this Article be for the purpose of assisting in defraying the recipient's day-to-day living expenses. To better achieve this purpose it is hereby provided that no moneys belonging to a recipient of aid to the blind under this Article identifiable as moneys paid pursuant to an aid to the blind award shall be subject to levy under execution, attachment or garnishment. (1937, c. 124, s. 7; 1971, c. 177; c. 603, s. 2; 1973, c. 476, s. 143.)

§ 111-19. Intercounty transfer of recipients. — Any recipient of aid to the blind under this Article who moves to another county of this State shall be entitled to receive aid to the blind in the county to which he has moved and the board of county commissioners of such county, or its authorized agent, is hereby directed to make the appropriate aid to the blind grant to such recipient subject to the rules and regulations of the Commission for the Blind, beginning with the next payment period after such recipient has established settlement in the county to which he has moved by continuously maintaining a residence therein for a period of 90 days. The county from which a recipient moves shall continue to pay aid to such recipient until such time as the recipient becomes qualified to receive aid from the county to which he has moved. The county from which a recipient has moved shall forthwith transfer all necessary records relating to the recipient to the appropriate board of county commissioners, or its authorized agent, of the county to which the recipient has moved immediately upon the recipient becoming qualified to receive aid from such county. (1937, c. 124, s. 8; 1947, c. 374; 1965, c. 905; 1971, c. 190, ss. 1, 2; 1973, c. 476, s. 143.)

§ 111-20. Awards subject to reopening upon change in condition. — All awards to needy blind persons made under the provisions of this Article shall be made subject to reopening and reconsideration at any time when there has been any change in the circumstances of any needy blind person or for any other reason. The Department of Human Resources and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations annually, or more often, as may be found necessary. The Department of Human Resources may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this Article and in accordance with the terms hereof.

Any changes made in such award shall be reported to the Department of Human Resources, and shall be subject to the right of appeal and review, as provided in G.S. 111-16. (1937, c. 124, s. 9; 1971, c. 160; 1973, c. 476, s. 143.)

§ 111-21. Disqualifications for relief. — No aid to needy blind persons shall be given under the provisions of this Article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing aid for dependent children and/or relief for the aged, and/or aid for the permanently and totally disabled. (1937, c. 124, s. 10; 1951, c. 319, s. 2.)

§ 111-22. Beneficiaries not deemed paupers. — No blind person shall be deemed a pauper by reason of receiving relief under this Article. (1937, c. 124, s. 11.)

§ 111-23. Misrepresentation or fraud in obtaining assistance. — Any person who shall obtain, or attempt to obtain, by means of a willful, false statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this Article. (1937, c. 124, s. 12.)

§ 111-24. Cooperation with federal departments or agencies; grants from federal government. — The Department of Human Resources is hereby empowered, authorized and directed to cooperate with the appropriate federal department or agency charged with the administration of the Social Security Act in any reasonable manner as may be necessary to qualify for federal aid for assistance to the needy blind and in conformity with the provisions of this Article, including the making of such reports in such form and containing such information as the appropriate federal department or agency may from time to time require, and the compliance with such regulations as the appropriate federal department or agency may from time to time find necessary to assure the correctness and verification of such reports.

The Department of Human Resources is hereby further empowered and authorized to receive grants-in-aid from the United States government for assistance to the blind and grants made for payment of costs of administering the State plan for aid to the blind, and all such grants so received hereunder shall be paid into the State treasury and credited to the account of the Department of Human Resources in carrying out the provisions of the Article. (1937, c. 124, s. 13; 1971, c. 349, s. 1; 1973, c. 476, s. 143.)

§ 111-25. Acceptance and use of federal aid. — The Department of Human Resources may expend under the provisions of the Executive Budget Act, such grants as shall be made to it for paying the cost of administering this Chapter by the appropriate federal department or agency under the Social Security Act. (1937, c. 124, s. 14; 1971, c. 349, s. 2; 1973, c. 476, s. 143.)

§ 111-26. Termination of federal aid. — If for any reason there should be a termination of federal aid as anticipated in this Article, then and in that event this Article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become effective or be in force unless and until the Governor of the State of North Carolina has issued a proclamation duly attested by the Secretary of the State of North Carolina to the effect that there has been a termination of such federal aid. In the event that this Article should be ipso facto repealed as herein provided, the State funds on hand shall be converted into the general fund of the State for such use as may be authorized by the Director of the Budget, and the county funds accumulated by the

provisions of this Article in the respective counties of the State shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 124, s. 15½.)

§ 111-27. Department of Human Resources to promote employment of needy blind persons; vending stands on public property. — For the purpose of assisting blind persons to become self-supporting, the Department of Human Resources is hereby authorized to carry on activities to promote the employment of needy blind persons, including the licensing and establishment of such persons as operators of vending stands in public buildings. The said Department may cooperate with the federal government in the furtherance of the provisions of the act of Congress known as the Randolph-Sheppard Bill (H.R. 4688) providing for the licensing of blind persons to operate vending stands in federal buildings, or any other acts of Congress which may be hereafter enacted.

The board of county commissioners of each county and the commissioners or officials in charge of various State and municipal buildings are hereby authorized and empowered to permit the operation of vending stands by needy blind persons on the premises of any State, county or municipal property under their respective jurisdictions: Provided, that such operators shall be first licensed by the Department of Human Resources: Provided further, that in the opinion of the commissions or officials having control and custody of such property, such vending stands may be properly and satisfactorily operated on such premises without undue interference with the use and needs thereof for public purposes. (1939, c. 123; 1973, c. 476, s. 143.)

§ 111-27.1. Department of Human Resources authorized to conduct certain business operations. — For the purpose of assisting blind persons to become self-supporting the Department of Human Resources is hereby authorized to carry on activities to promote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The Executive Budget Act shall apply to the operation of such enterprises as to all appropriations made by the State to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day-by-day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to State funds but shall be supervised by the Department of Human Resources. All of the business operations under this law, however, shall be subject to regular audits by the State Auditor. Blind or visually handicapped employees or vending-stand operators employed by the Department of Human Resources are hereby declared to be State employees. (1945, c. 72, s. 2; 1971, c. 1025, s. 1; 1973, c. 476, s. 143.)

§ 111-27.2. Blind vending-stand operators; retirement benefits. — The Department of Human Resources is authorized and empowered to continue and maintain, in its discretion, any existing retirement system providing retirement benefits for blind vending-stand operators and to expend funds to provide necessary contributions to any existing retirement system for blind vending-stand operators to the extent that the Department determines such retirement system to be in the best interest of the blind vending-stand operators. (1969, c. 1255, s. 4; 1973, c. 476, s. 143.)

§ 111-28. Department of Human Resources authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons. — The Department of Human Resources is hereby authorized and empowered to receive grants-in-aid from the federal government or any State

(1) The Department of Human Resources is hereby authorized to expend such funds as are appropriated to it as an equalizing fund for aid to the needy blind for the purpose of equalizing the financial burden of providing relief to the needy blind in the several counties of the State, and equalizing the grants received by the needy blind recipients. Such amount shall be expended and disbursed solely for the use of the needy blind coming within the eligibility provisions outlined in Chapter 124 of the Public Laws of 1937. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the Commission for the Blind, producing as far as possible a just and fair distribution thereof.

(2) The Department of Human Resources is hereby authorized to make such grants to the needy blind of the State as will enable said Department to receive the maximum grants from the federal government for such purpose.

(3) The Department of Human Resources is hereby authorized to work out plans with the Secretary of State for lending to needy blind lawyers volumes of the North Carolina reports in his custody that are unused or have become damaged. The Secretary of State is hereby authorized to lend such reports to the Department of Human Resources for relending to needy blind lawyers. Such reports may be recalled at any time by the Secretary of State upon giving 15 days' written notice to the Department of Human Resources which shall remain responsible for said reports until they are returned. The Department shall relend such reports only to blind lawyers, who, after an investigation by the Department, are determined to have no income, or an income insufficient to purchase such reports. (1943, c. 600; 1973, c. 476, s. 143.)

§ 111-30. Personal representatives for certain recipients of aid to the blind. — If any otherwise qualified applicant for or recipient of aid to the blind is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, a petition may be filed by a relative of said blind person, or other interested person, or by the Secretary of Human Resources before the appropriate court under G.S. 111-31, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of aid to the blind is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of aid to the blind. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the Secretary of Human Resources in the selection of a suitable person for appointment as personal representative for the limited purposes of G.S. 111-30 to 111-33. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable

or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the Department of Human Resources, to be used in carrying out the provisions of this law.

The Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words "Social Security Board" appear in G.S. 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The Department of Human Resources is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of such assistance and services and in the study of the problems involved.

The Department of Human Resources is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the Department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the Department of Human Resources, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the Department of Human Resources or the board of county commissioners or the county social services department, or acquired in the course of the performance of official duties.

Notwithstanding the above, the Department of Human Resources is authorized to release to the North Carolina Department of Motor Vehicles and the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Department of Motor Vehicles and the Department of Revenue shall be treated by those departments as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General Statutes of this State. (1939, c. 124; 1941, c. 186; 1969, cc. 871, 982; 1973, c. 476, s. 143.)

§ 111-28.1. Department of Human Resources authorized to cooperate with federal government in rehabilitation of blind. — The Department of Human Resources is hereby authorized and empowered to make the necessary rules and regulations to cooperate with the federal government in the furtherance of the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190) providing for the rehabilitation of the blind. (1945, c. 72, s. 1; 1973, c. 476, s. 143.)

§ 111-29. Expenditure of equalizing funds; grants affording maximum federal aid; lending North Carolina reports. — In addition to the powers and duties imposed upon the Department of Human Resources, the said Department shall be and hereby is charged with the powers and duties hereinafter enumerated; that is to say:

personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter de novo without a jury. (1945, c. 72, s. 4; 1953, c. 1000; 1961, c. 666, s. 2; 1971, c. 603, s. 3; 1973, c. 476, s. 138.)

§ 111-31. Courts for purposes of §§ 111-30 to 111-33; records. — For the purposes of G.S. 111-30 to 111-33 the court may be either a domestic relations court established pursuant to Article 13, Chapter 7, General Statutes, or the clerk of the superior court in the county having responsibility for the administration of the particular aid to the blind payments. The court may, for the purposes of G.S. 111-30 to 111-33, direct the Secretary of Human Resources to maintain records pertaining to all aspects of any personal representative proceeding, which the court may adopt as the court's record and in lieu of the maintenance of separate records by the court. (1961, c. 666, s. 2; 1971, c. 603, s. 4; 1973, c. 476, s. 138.)

Editor's Note. — Article 13, Chapter 7, referred to in this section, was repealed by Session Laws 1971, c. 377, s. 32. For present provisions as to courts, see Chapter 7A.

§ 111-32. Findings under § 111-30 not competent as evidence in other proceedings. — The findings of fact under the provisions of G.S. 111-30 shall not be competent as evidence in any case or proceeding dealing with any subject matter other than provided in G.S. 111-30 to 111-33. (1961, c. 666, s. 2.)

§ 111-33. Sections 111-30 to 111-33 are not to affect provisions for payments for minors. — Nothing in G.S. 111-30 to 111-33 is to be construed as affecting that portion of the State plan for aid to the blind which provides that payments for eligible blind minors should be made to the parent, legal guardian, relatives or other persons "in loco parentis" of the blind minor, and that payments may be made to the minor if he is emancipated. (1961, c. 666, s. 2.)

§ 111-34: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-35. Authority of director of social services. — The respective boards of county commissioners of each county are hereby authorized to empower and confer upon the county director of social services for their respective counties the authority to perform any or all acts or functions which the previous sections of this Article direct or authorize the county boards of commissioners to perform. Any act or function performed by a county director of social services under the authority of this section shall be reported by him to the respective county board of commissioners for its review, and for alternative action or disposition where deemed appropriate by such board. Provided that the respective boards of county commissioners shall make no alternative or different disposition of a matter which the county director of social services is empowered to act upon which would prejudicially affect the status of any aid to the blind recipient without first affording such recipient reasonable notice and opportunity to be heard. (1971, c. 348, s. 1.)

§§ 111-36 to 111-40: Reserved for future codification purposes.

ARTICLE 3.

Operation of Vending Facilities on State Property.

§ 111-41. Preference to visually handicapped persons in operation of vending facilities; responsibility of Department of Human Resources. — In order to promote the employment and the self-sufficiency of visually

handicapped persons in North Carolina, State agencies shall upon the request of the Department of Human Resources give preference to visually handicapped persons in the operation of vending facilities on State property. The Department of Human Resources shall encourage and assist the operation of vending facilities by visually handicapped persons. (1973, c. 1280, s. 1.)

§ 111-42. Definitions as used in this Article. — (a) "Regular vending facility" means a vending facility where food preparation or cooking is not done on the State property.

(b) "State agency" means department, commission, agency or instrumentality of the State.

(c) "State property or State building" means building and land owned, leased, or otherwise controlled by the State, exclusive of schools, colleges and universities, the North Carolina State Fair, and the State Legislative Building.

(d) "Vending facility" includes a snack bar, cafeteria, restaurant, cafe, concession stand, vending stand, cart service, or other facilities at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products or related items are regularly sold.

(e) "Visually handicapped" means a person who is totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential and who is registered pursuant to G.S. 111-4. (1973, c. 1280, s. 1.)

§ 111-43. Installation of coin-operated vending machines. — In locations where the Department determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department shall be used by the Department for the support of vending facilities operated by the visually handicapped. (1973, c. 1280, s. 1.)

§ 111-44. Location and services provided by State agency. — If the Department of Human Resources shall determine that a location is suitable for the operation of a vending facility by a visually handicapped person, the State agency with authority over the location shall provide proper space, plumbing, lighting, and electrical outlets for the vending facility in the original planning and construction, or in alteration and renovation of present location. The State agency shall provide necessary utilities, janitorial services and garbage disposal for the operation of the vending facility. Space for the vending facilities and service therefor shall be provided without charge. (1973, c. 1280, s. 1.)

§ 111-45. Duty of State agency to inform Department. — It shall be the duty of the State agencies to inform the Department of existing and prospective locations for vending facilities and coin-operated vending machines and to prescribe regulations (upon request of the Department) to promote the successful operation of the vending facilities of the visually handicapped. (1973, c. 1280, s. 1.)

§ 111-46. Vending facilities operated by those other than visually handicapped persons. — Where vending facilities on State property are operated by those other than the visually handicapped persons on the date of enactment of this Article, the contract of these vending facilities shall not be renewed or extended unless the Secretary of the Department of Human Resources is notified thereof and he determines within 30 days of such notification that the vending facilities are not, or cannot become, suited for operation by the visually handicapped. However, if the Secretary of the

Department of Human Resources within 30 days of the date of such notification fails to provide for the operation of the vending facilities by the visually handicapped, the existing contract may be renewed or extended. (1973, c. 1280, s. 1.)

§ 111-47. Exclusions. — (a) This Article is not intended to cover food services provided by hospitals or residential institutions as a direct service to patients, inmates, trainees, or otherwise institutionalized persons.

(b) This Article shall not prohibit the continued use of coin-operated vending machines currently the property of the Division of Services for the Blind of the Department of Human Resources and now part of the vending-stand program. (1973, c. 1280, s. 1.)

Chapter 112.

Confederate Homes and Pensions.

Article 1.

Confederate Woman's Home.

Article 2.

Pensions.

ARTICLE 1.

Confederate Woman's Home.

§ 112-1. Incorporation and powers of Association. — Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Carolina Confederate soldiers.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence until January 1, 1980. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the State, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S., s. 5134; 1949, c. 121; 1953, c. 62; 1959, c. 222; 1969, c. 116.)

State Government Reorganization. — The Confederate Woman's Home Association was transferred to the Department of Human Resources by § 143A-159 (now repealed), enacted by Session Laws 1971, c. 864.

§ 112-2: Repealed by Session Laws 1973, c. 476, s. 166.

Cross Reference. — As to the Board of Directors of the Confederate Women's Home, see §§ 143B-173 through 143B-176.

§ 112-3. Location of Home. — The Department of Human Resources shall locate the Confederate Woman's Home at such place in North Carolina as they shall deem proper, and it shall be located in or near that town or city offering the largest inducement having due regard to the desirability and suitability for the location of the home. (1913, c. 62, s. 2; C. S., s. 5136; 1973, c. 476, s. 166.)

§ 112-4: Repealed by Session Laws 1973, c. 476, s. 166.

§ 112-5. Reversion of property. — If the land on which the said Home shall be located or used in connection therewith shall at any time cease to be used for that purpose, or for the use and benefit of the dependent wives and widows of the Confederate soldiers as herein specified, or other worthy indigent Confederate women of this State, the same shall revert to the person or persons donating the same, if it has been acquired entirely by donations; otherwise, it shall revert to the State; but in all cases of nonuser for the said purpose, the buildings thereon, the furniture and equipment generally of every nature, shall revert and belong to the State. (1913, c. 62, s. 4; C. S., s. 5138.)

§ 112-6: Repealed by Session Laws 1973, c. 476, s. 166.

ARTICLE 2.

Pensions.

Part 1. Pension Boards.

§ 112-7. State Board; examination of applications. — The Governor, Attorney General, and Auditor shall be constituted a State Board of Pensions, which shall examine each application for a pension, and for this purpose it may take other testimony than that sent by the county boards. Such applications as are approved by the State Board shall be paid by the Treasurer, upon the warrant of the Auditor. (1921, c. 189, s. 1; C. S., s. 5168(a).)

§ 112-8. State Board to make rules. — The State Board of Pensions is empowered to prescribe rules and regulations for the more certainly carrying into effect this Article according to its true intent and purpose. (1921, c. 189, s. 2; C. S., s. 5168(b).)

§ 112-9. Auditor to transmit lists to clerks of court. — The Auditor shall, as soon as the same is ascertained, transmit to the clerks of the superior court of the several counties a correct list of the pensioners, with their post offices, as allowed by the State Board of Pensions. (1921, c. 189, s. 3; C. S., s. 5168(c); 1929, c. 296, s. 1.)

§ 112-10. County board. — The clerk of the superior court, together with three reputable ex-Confederate soldiers, or sons, or daughters, or grandsons, or granddaughters of ex-Confederate soldiers, to be appointed by the State Auditor, shall constitute a county board of pensions for their county. (1921, c. 189, s. 4; C. S., s. 5168(d); 1929, c. 92, s. 1; 1933, c. 465, s. 1.)

§ 112-11. Compensation of members of the county board of pensions. — Each member of the county board of pensions shall be entitled to two dollars ($2.00) a day, not exceeding three days in any year, when attending the annual meeting of said board, the said compensation to be paid by the county treasurer on the order of the board of county commissioners. (1903, c. 273, s. 19; Rev., s. 2783; C. S., s. 3913.)

§ 112-12. Examination and classification by county board; certificate of disability. — All persons entitled to pensions under this Article, not now drawing pensions, shall appear before the county board of pensions for examination and classification in compliance with the provisions of this Article: Provided, that all such as are unable to attend shall present a certificate from a creditable physician, living and practicing medicine in the community in which the applicant resides, that the applicant is unable to attend. (1921, c. 189, s. 5; C. S., s. 5168(e); Ex. Sess. 1924, c. 106; 1941, c. 152, s. 1.)

§ 112-13. Annual revision of pension roll. — On the first Mondays of February and July of each year the pension board of each county shall revise and purge the pension roll of the county, first giving written notice of 10 days to the pensioner who is alleged not to be rightfully on the State pension roll, to show cause why his name should not be stricken from the pension list, and the board shall meet another day to consider the subject of purging the list. (1921, c. 189, s. 6; C. S., s. 5168(f); Ex. Sess. 1924, c. 106.)

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-14. Persons disabled in militia service; their widows and orphans. — Every person who may have been disabled by wounds in the militia service of the State, or rendered incapable thereby of procuring subsistence for himself and family, and the widows and orphans of such persons who may have died from such wounds, or from disease contracted in such service, shall be entitled to pensions as hereinafter provided for Confederate soldiers. (R. C., c. 84; Code, s. 3472; Rev., s. 4990; C. S., s. 5147.)

§ 112-15. Blind or maimed Confederate soldiers. — All ex-Confederate soldiers and sailors who have become totally blind since the war, or who lost their sight or both hands or feet, or one arm and one leg, in the Confederate service, shall receive four hundred and twenty dollars ($420.00) a year. (1899, c. 619; 1901, c. 332, s. 5; Rev., s. 4991; 1907, c. 60; 1921, c. 189, s. 7; C. S., s. 5168(g); Ex. Sess. 1924, c. 83; 1925, c. 275, s. 6, subsec. 24.)

§ 112-16. Helpless or demented widows of Confederate soldiers. — Every widow of a Confederate soldier who married and was widowed prior to 1866 and who has not remarried and who bore and raised legitimate child or children of the deceased Confederate soldier, and who has lost her mind, or become helpless, and is not confined in an asylum, or is not an inmate of any charitable institution,

shall receive the same pay and in the same manner as blind Confederate soldiers. (1923, c. 3; C. S., s. 5168(h).)

§ 112-17: Repealed by Session Laws 1945, c. 699, s. 2.

§ 112-18. Classification of pensions for soldiers and widows. — There shall be paid out of the treasury of the State, on the warrant of the Auditor, to every person who has been for 12 months immediately preceding his application for pension a bona fide resident of the State, and who is incapacitated for manual labor, and was a soldier or sailor in the service of the Confederate States of America during the War between the States, and to the widow of any deceased officer, soldier, or sailor who was in the service of the Confederate States of America during the War between the States, if such widow was married to such soldier, or sailor, prior to the date set forth in the widow's classification in this section, and if she has married again, is widow at the date of her application, the following sums annually, according to the degree of disability ascertained by the following grades:

Class "A." To all Confederate soldiers not included in G.S. 112-17, who are now disabled from any cause to perform manual labor, twelve hundred dollars ($1200).

Class "B." To such colored servants who went with their masters to the war and can prove their service to the satisfaction of the county and State pension boards, four hundred and fifty-six dollars ($456.00).

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, nine hundred dollars ($900.00).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January 1, 1880, and to such widows who were married to such soldiers subsequent to January 1, 1880, and who are now on the pension rolls, by virtue of previous statutes, four hundred ninety-two dollars ($492.00). Provided, that the State Board of Pensions upon the recommendation of the county pension board, may add to Class B list of pensions such widows of Confederate veterans who were married to the deceased veterans prior to the year 1899 and who are now more than 60 years of age, as in the judgment of the State Board of Pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; C. S., s. 5168(j); Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; 1945, c. 699, s. 1; c. 1051, ss. 1-3; 1949, c. 1158, ss. 1-4; 1953, c. 1225; 1957, c. 1395, s. 1.)

Editor's Note. — Section 112-17, referred to above, was repealed by Session Laws 1945, c. 699, s. 2.

§ 112-19. Certain widows of Confederate soldiers placed on Class B pension roll. — All widows of Confederate soldiers who have lived with such soldiers for a period of five years prior to the death of such soldier, or for any period of time if a child was born of said marriage, and where the death of the soldier occurred since the year 1899, shall, upon proper proof of such facts, be placed upon the pension list in Class B, and paid from the pension fund such pensions as are allowed to other widows of Confederate soldiers in Class B: Provided, that no payments shall be made to any widows of Confederate soldiers as hereinbefore referred to, except and until they shall have qualified for said

benefits under and pursuant to the general State pension laws as modified hereby. (1937, cc. 181, 454; 1953, c. 1169; 1959, c. 1004.)

§ 112-20. Persons not entitled to pensions. — No person shall be entitled to receive the benefits of this Article:

(1) Who is an inmate of the Soldiers' Home at Raleigh;
(2) Who is confined in an asylum or county home;
(3) Repealed by Session Laws 1959, c. 181, s. 1;
(4) Who holds a national, State, or county office, which pays annually in salary or fees the sum of three hundred dollars ($300.00);
(5) Who was a deserter, or the widow of such deserter; but no soldier who has been honorably discharged, or who was in service at the surrender shall be considered a deserter in the meaning of this section;
(6) Who is receiving aid from the State under any act providing for the relief of soldiers who are blind or maimed;
(7) Who owns in his own right, or in the right of his wife, property whose tax valuation exceeds two thousand dollars ($2,000), or who, having owned property in excess of two thousand dollars ($2,000), has disposed of the same by gift or voluntary conveyance to his wife, child, next of kin, or to any other person since the eleventh day of March, 1885: Provided, that the county board of pensions may place upon the pension roll, in the classes to which they would otherwise belong, any Confederate soldier, sailor, or widow disqualified by the provisions of this section, who may appear to be unable to earn a living from property valued as much as two thousand dollars ($2,000) or more for taxation, and who may appear to the board from special circumstances worthy to be placed upon the pension roll. (1921, c. 189, s. 10; C. S., s. 5168(k); 1959, c. 181, s. 1.)

Editor's Note. — Section 2 of the act repealing subdivision (3) provides: "It is the intent of this act that any widow of a Confederate soldier, who is qualified to receive a pension from this State under Article 2 of Chapter 112 of the General Statutes, may continue to receive such a pension, even though she is eligible for and receives a pension from any other state or from the United States."

§ 112-21. Removal from pension lists of persons eligible for old age assistance. — All widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for aid to the aged or disabled under the provisions of Chapter 108 of the General Statutes, from and after the first day of June 1939, shall not be entitled to any pension provided by the provisions of Chapter 112, entitled "Confederate Homes and Pensions," and any acts of the General Assembly amendatory thereof, or by virtue of any special or general law relating to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

Before the first day of June, 1939, the county board of social services in every county in this State shall make a complete and thorough examination and investigation of all widows of Confederate veterans and all colored servants of Confederate soldiers whose names are on the pension roll in each county, and shall determine the eligibility of such pensioners for aid to the aged or disabled under the provisions of Chapter 108 of the General Statutes without any applications being made by such persons for aid to the aged or disabled as required by said law, and after making such investigation, shall determine the eligibility of such persons for old age assistance and the amount of assistance which any such person is entitled to receive in accordance with the provisions of the Old Age Assistance Act. After such investigations and determinations have been made, the county board of social services shall notify the county pension board in the county of such county board of social services of the persons

who are found to be eligible for old age assistance under the provisions of said law. Upon such certification to the county pension board, the county pension board shall revise the list of pensioners in said county and shall exclude from said list all the widows of Confederate veterans and all colored servants of Confederate soldiers who are certified as being eligible for old age assistance. The county pension board shall, upon receipt of such certification from the county board of social services, and revision of the pension list as aforesaid, notify the State Board of Pensions of the revision of the pension list for said county and the names eliminated therefrom. The county board of social services, in making the aforesaid certification to the county pension board, shall also send a copy thereof to the State Board of Pensions, and such certification from the county board of social services to the State Board of Pensions shall be sufficient authority for removal of such names from the pension list by the State Board of Pensions. If it should thereafter be determined that such person so removed from the pension list was not eligible for old age assistance by the authority administering said law, the award for old age assistance to such person is revoked, the name of such person, if otherwise eligible, shall be restored to the said pension list by the county pension board, and the full pension to which such person would be entitled, if the name had not been withdrawn from said list, shall be paid.

As to all persons found eligible for old age assistance whose names are removed from the pension list as herein required, the amount necessary for payment of awards for old age assistance shall be paid entirely out of State and federal funds.

In the event it is determined by the county board of social services that the awards which such eligible persons are entitled to receive shall be less than the amount paid such persons as pensions, such names shall not be withdrawn from the said pension list, and the county board of social services shall not make any award of old age benefits to such persons.

After the county pension board has revised the list of pensions in each county as herein provided, and after having certified the same to the State Board of Pensions, the State Board of Pensions shall certify the revised list of pensioners to the State Auditor and the State Auditor shall transmit to the clerks of the superior court in the several counties a correct revised list of pensioners, with their post offices, as allowed by the State Board of Pensions. (1937, c. 227; 1939, c. 102; 1969, c. 981, ss. 2, 3; c. 982.)

State Government Reorganization. — The State Board of Pensions was transferred to the Department of State Auditor by § 143A-29, enacted by Session Laws 1971, c. 864.

Part 3. Application for Pensions.

§ 112-22. Forms provided by Auditor. — The Auditor of the State shall provide a form of application (according to the terms of this Article), and have the same printed and sent to the clerks of the superior court of the several counties of the State for use of applicants. (1921, c. 189, s. 11; C. S., s. 5168(l).)

§ 112-23. Application by person, guardian or receiver. — No soldier, officer, sailor, or widow shall be entitled to the benefits of this Chapter except upon his or her own application, or, in case he or she is insane, upon the application of his or her guardian or receiver. (1921, c. 189, s. 12; C. S., s. 5168(m).)

§ 112-24. Applications by persons not on rolls. — Before any officer, soldier, or sailor, not now receiving a pension, shall receive any part of the annual appropriation made for pensions he shall, on or before the first Monday in July of every year, file with the superior court clerk of the county wherein he resides an application for relief, setting forth in detail the company and

regiment or battalion in which he served at the time of receiving the wound; the time and place of receiving the wound; whether he is holding an office in the State, United States, or county from which he is receiving the sum of three hundred dollars ($300.00) in fees or salary; whether he is worth in his own right or in the right of his wife, property at its assessed value for taxation to the amount of two thousand dollars ($2,000); whether he is receiving any aid from the State of North Carolina under any other statute providing for the relief of the maimed and blind soldiers of the State; and whether he is a citizen of the State of North Carolina. Such application shall be verified by the oath of the applicant made before anyone empowered to administer oaths, and shall be accompanied by the affidavit of one or more credible witnesses, stating that he or they verily believe the applicant to be the identical person named in the application, and that the facts stated in the application are true; and when the county board of pensions is satisfied with the justice of the claim made by the applicant they shall so certify the same to the Auditor of the State under their hands and the seal of the superior court of their county, which shall be impressed by the clerk of the superior court of the county; and there shall accompany the certificate so sent to the Auditor the application, affidavit, and proofs taken by them, which papers shall be kept on file in the Auditor's office. Clerks of the superior courts shall receive no fees whatsoever for services herein required of them. (1921, c. 189, s. 13; C. S., s. 5168(n).)

§ 112-25. Time for forwarding certificate; Auditor to issue warrant. — It shall be the duty of the clerk of the superior court of the county where the application is filed to forward to the Auditor of the State, immediately after the certificate required by G.S. 112-24 is made and before the first Monday in August in each year, the application and proofs and certificates, and upon the State Board of Pensions being satisfied of the truth and genuineness of the application, the Auditor shall issue his warrant on the State Treasurer for the same. (1921, c. 189, s. 14; C. S., s. 5168(o).)

§ 112-26. Subsequent certificate; suggestion of fraud. — After an application has once been passed upon and allowed by the county and State boards, it shall be necessary only for the applicant to file with the Auditor of State a certificate from the clerk of the superior court of the county in which the application was originally filed, setting forth that the applicant is the identical person named in the original application which is on file in the Auditor's office, and that the applicant is alive, but still disabled, and a citizen of this State, and still entitled to the benefits of this Article, which certificate may be passed upon by the State Board, upon suggestions of fraud, before the Auditor draws his warrant upon such certificate. (1921, c. 189, s. 15; C. S., s. 5168(p).)

Part 4. Payment of Pensions; Warrants.

§ 112-27. Payment of pensions in advance; acknowledgment of receipt of warrants. — Pensions are payable monthly in advance, and the State Auditor shall divide into 12 equal installments the yearly amount due each pensioner and shall transmit to the clerks of the superior court of the various counties warrants for the same on or before the first day of each calendar month, the installment then due. It shall be the duty of the clerk of the superior court to acknowledge to the Auditor the receipt of such warrants by the next mail after their receipt, to deliver or mail forthwith to each pensioner in his county his warrant, and to post in the courthouse a list of the pensioners to whom he has mailed or delivered warrants. (1921, c. 189, s. 16; C. S., s. 5168(q); 1939, c. 187, s. 1.)

Installments of a pension payable in the future are not assignable. Gill v. Dixon, 131 N.C. 87, 42 S.E. 538 (1902).

§ 112-28. Warrants payable to pensioner or order; endorsement; copy of power of attorney. — The Auditor shall issue his warrant payable to the pensioner, or order, and such warrants shall not be paid by the Treasurer without the endorsement of the payee or his duly appointed attorney-in-fact, specially authorized to make such endorsement; and if such endorsement is made by the attorney-in-fact of the payee, a copy of the power of attorney, duly attested by the clerk of the superior court or notary public of the county in which the payee resides shall be attached to the warrant. (1921, c. 189, s. 17; C. S., s. 5168(r); 1941, c. 152, s. 3; 1973, c. 108, s. 63.)

Part 5. Funds Provided for Pensions.

§ 112-29. Limit and distribution of appropriation. — The State Auditor is authorized, empowered and directed to apportion, distribute and divide the money appropriated by the State for pensions, and to issue warrants to the several pensioners pro rata in their respective grades: Provided, that if the money appropriated by the General Assembly for the Confederate soldiers, widows and servants is more than enough to pay them the amounts mentioned in this Chapter, or if for any other cause, after paying the Confederate soldiers, widows and servants the amount stipulated in their respective grades as set out in this Chapter, there should be an excess of the money appropriated for the first year, then the balance in the fund so appropriated for the first year shall revert and supplement the fund appropriated for the second year of the biennium: Provided, further, that if any moneys herein appropriated for the purposes aforesaid shall not be needed to pay the Confederate soldiers, widows and servants the amounts stipulated in their respective grades, then such moneys shall be paid by the State Board of Pensions into the treasury and become a part of the general fund appropriated by the State for other purposes: Provided, that no greater amount shall be paid out under this Chapter than is appropriated under the General Appropriation Maintenance Act. (1921, c. 189, s. 20; C. S., s. 5168(u); 1927, c. 96, s. 4.)

Legislative Right. — It is the exclusive right of the legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained and from what fund and by whom allowances for their support shall be made. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

§ 112-30. Increase by counties; special tax. — The county commissioners of each county in the State are authorized and empowered, if in their discretion such levy is deemed advisable, to levy for each year, at the same time and in the same manner as the levy of other county taxes, a special tax not exceeding two cents (2¢) on the hundred dollars' ($100.00) valuation of property and six cents (6¢) on each taxable poll for the purpose of increasing the pensions of Confederate soldiers and widows.

Such tax shall be collected and accounted for by the sheriff or other tax collector in the same manner and under the same penalties as other taxes levied for the county, and the net proceeds thereof shall be applied each year to increase pro rata the pensions of such persons as stand upon the Confederate pension roll of the county for the year in which the tax is levied.

The amount collected under this section shall be disbursed by the county commissioners pro rata to the various pensioners in such county as shown by the State pension list for that county. (1921, c. 189, s. 21; C. S., s. 5168(v).)

Local Modification. — Cumberland: 1907, c. 555.

Constitutionality. — Whether this section be regarded as general or special, it met the requirements of former N.C. Const., Art. V, § 6, and its efficacy is not impaired by such section of the Constitution. Brown v. Jennings, 188 N.C. 155, 124 S.E. 150 (1924).

Part 6. Miscellaneous Provisions.

§ 112-31. Officer failing to perform duties. — Any officer or other person who shall neglect or refuse to discharge the duties imposed upon him by this Article shall be guilty of a misdemeanor, and upon conviction thereof in the superior court shall be fined or imprisoned at the discretion of the court. (1921, c. 189, s. 22; C. S., s. 5168(w).)

§ 112-32. Speculation in pension claims a misdemeanor. — Any person who shall speculate or purchase for a less sum than that to which each may be entitled the claims of any soldier or sailor or widow of a deceased soldier or sailor, allowed under the provisions of this Article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both in the discretion of the court. (1921, c. 189, s. 23; C. S., s. 5168(x).)

Installments of a pension payable in the future are not assignable. Gill v. Dixon, 131 N.C. 87, 42 S.E. 538 (1902).

§ 112-33. County payment of burial expenses. — Whenever in any county of this State a Confederate pensioner on the pension roll of the county or the widow of a Confederate soldier shall die, it shall be the duty of the board of commissioners of such county, upon the certificate of such fact by the clerk of the superior court and recommendation of the chairman of the pension board of the county, to order the payment out of the general fund of the county of a sum not exceeding thirty dollars ($30.00), to be applied toward defraying the burial expenses of such deceased pensioner or widow. (1921, c. 189, s. 24; C. S., s. 5168(y).)

Residence of Pensioner Immaterial. — This section requires the amount stated to be paid by the board of commissioners of the county on the pension roll of which the name of the pensioner appears, irrespective of residence. Hannah v. Board of Comm'rs, 176 N.C. 395, 97 S.E. 160 (1918).

§ 112-34. State payment of burial expenses. — Whenever in any county of this State a Confederate pensioner on the pension roll shall die, and such fact has been determined by the State Auditor, the State Auditor shall forward to the clerk of the superior court of the county in which such pensioner resided a State warrant in the amount of one hundred fifty dollars ($150.00), to be paid by the clerk of the superior court of the county in which such pensioner resided to the personal representative, or next of kin of such deceased pensioner to be applied toward defraying the funeral expenses of such deceased pensioner: Provided, that this section shall also apply to pensioners transferred to old age assistance under the provisions of G.S. 112-21: Provided further, that this section shall apply to persons who otherwise would be entitled to pensions but who are not on pension roll at time of death because of being admitted to county home, county institution or State institution. (1939, c. 187, s. 2; 1941, c. 152, s. 4; 1949, c. 1018; 1957, c. 1395, s. 2.)

§ 112-35. Peddling without license. — All ex-Confederate soldiers who are without means of support other than their manual labor, and who are incapacitated to perform manual labor for any reason other than by their vicious

habits, and now citizens of this State, shall be allowed to peddle drugs, goods, wares, and merchandise in any of the counties of this State without a license therefor. Before any soldier shall be entitled to the benefits of this section he shall make application to the county board of pensioners of the county of which he is a resident, and show to the satisfaction of the county board of pensions that he is entitled to the same by having served in the Confederate army or navy during the War between the States, and that he is incapacitated to perform manual labor, and does not own property the tax valuation of which exceeds the sum of two thousand dollars ($2,000) in his own name or in the name of his wife, deeded to her by him since the first day of March, 1902. (1921, c. 189, s. 25; C. S., s. 5168(z).)

Quoted in Eastern Carolina Tastee-Freez, Inc. v. City of Raleigh, 256 N.C. 208, 123 S.E.2d 632 (1962).

§ 112-36. Taking fees for acknowledgments by pensioners. — It shall be unlawful for any clerk of the superior court, notary public or any magistrate to charge any Confederate pensioner or the widow of such Confederate pensioner receiving a pension from the State of North Carolina for taking acknowledgments in connection with pension papers.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1925, c. 68.)

§ 112-37. Officers required to check roll of pensioners with record of vital statistics. — It shall be the duty of the register of deeds and the clerk of the court of each county in the State of North Carolina to check the roll of pensioners furnished the clerks of the court of the various counties of the State, with the record of vital statistics in the office of the register of deeds, within 10 days after receipt of the pension roll, which roll shall be furnished by the State Auditor on or before October 15 and April 15 of each year, and certify under their hands and seals of their office, the names of all deceased pensioners with dates of their death, whose names appear upon the pension roll, to the State Auditor. The State Auditor at the time of furnishing the pension rolls to the register of deeds and clerk of the superior court of each county, as herein provided, shall also furnish copies of said pension rolls to the State Registrar of Vital Statistics, who shall cause the same to be checked against the vital statistics records in his office and certify to the State Auditor the names of all persons appearing on said pension rolls, which the records in his office show to be deceased, together with the dates of their death. (1931, c. 144.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

March 1, 1978

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

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