THE GENERAL STATUTES OF NORTH CAROLINA

1967 Cumulative Supplement

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

UNDER THE DIRECTION OF
W. O. LEWIS, D. W. PARRISH, JR., S. G. ALRICH, W. M. WILLSON
AND BEIRNE STEDMAN

Volume 2C

Place in Pocket of Corresponding 1965 Replacement Volume of Main Set and Discard Previous Supplement

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1967

Preface

This Cumulative Supplement to Replacement Volume 2C contains the general laws of a permanent nature enacted at the 1965, 1966 and 1967 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

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

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in the Cumulative Supplement to Replacement Volumes 4B and 4C.

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

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

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1965 and 1967 Sessions of the General Assembly affecting Chapters 63 through 96 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 260 (p. 133)-271 (p. 226).
Federal Reporter 2nd Series volumes 317-378 (p. 376).
Federal Supplement volumes 217-269 (p. 96).
United States Reports volumes 373-387 (p. 427).
Supreme Court Reporter volumes 83 (p. 1560)-87 (p. 1608).
North Carolina Law Review volumes 41 (p. 665)-45 (p. 809).

The General Statutes of North Carolina
1967 Cumulative Supplement

VOLUME 2C

Chapter 63.

Aeronautics.

Article 1.

Municipal Airports.

§ 63-1. Definition.

This chapter contemplates full cooperation and compliance with federal statutes and rules and regulations of appropriate federal agencies. City of Charlotte v. Spratt, 263 N.C. 656, 140 S.E.2d 341 (1965).

§ 63-2. Cities and towns authorized to establish airports.

Franchise for Limousine Service to Airport.—The provisions of §§ 160-1, 63-2, 63-49, 63-50, 63-53 and 62-260 authorize a municipal corporation to award a franchise contract granting the right to provide limousine service to a municipal airport upon certain terms and conditions set forth in the franchise ordinance. Harrelson v. City of Fayetteville, 271 N.C. 87, 155 S.E.2d 749 (1967).

§ 63-4. Joint airports established by cities and towns and counties.

Applied in Vance County v. Royster, 271 N.C. 53, 155 S.E.2d 790 (1967).

§ 63-5. Airport declared public purpose; eminent domain.

City or County May Appropriate and Expend Public Funds for Acquisition or Construction.—The acquisition of land for, and the construction and operation of, an airport for use by the public is a purpose for which a city or a county or both may appropriate and expend public funds and for which it or they may acquire land by the exercise of the power of eminent domain. Vance County v. Royster, 271 N.C. 53, 155 S.E.2d 790 (1967).

Materiality of Amount of Use in Immediate Future.—In a taking of land for the construction of an airport, as in the case of a taking for the construction of a road, if the taking is, in reality, for the purpose of making the property available for use by the public, it is immaterial that, in the immediate future, only a small segment of the public will be likely to make actual use of it. Vance County v. Royster, 271 N.C. 53, 155 S.E.2d 790 (1967).

The fact that at the time of the taking of land by eminent domain for the purpose of building an airport there are no commitments from commercial air lines and the immediate prospect is for use only by a small number of private planes, is irrelevant where there is no suggestion that the airport would not be available and eventually used as a public facility. Vance County v. Royster, 271 N.C. 53, 155 S.E.2d 790 (1967).

Taking of Land to Provide Clear Approach to Runway.—The taking of land so as to provide for airplanes an approach to the runway of the airport free from trees and structures of considerable height is reasonably incidental to the construction of such an airport. Vance County v. Royster, 271 N.C. 53, 155 S.E.2d 790 (1967).

§ 63-8.1. Election on special tax levy for airport purposes. — (a) Notwithstanding any limitation provided by any general, public-local or private law, the governing body of any city, town or county is hereby authorized and empowered to submit to the qualified voters of such city, town or county the question of the levy of a special annual tax on each one hundred dollars ($100.00) of assessed valuation of the taxable property therein for constructing, improving, equipping, maintaining and operating airports, landing fields and other air navigation facilities provided for in this chapter, or for any one or more of such special purposes. The rate or amount of such tax for which a levy may be made hereunder shall be determined by the governing body of such city, town or county and the special approval of the General Assembly is hereby given for the levying of such tax for such purposes.

(b) (1) Such question may be submitted to the voters at any election, whether general, regular or special, or at a special election called for such purpose, and such election shall be held and conducted in the same manner as such general, regular or special election or in the same manner as elections are held to determine the question of the issuance of bonds. The form of the ballot shall be determined by the governing body of such city, town or county and voting machines may be used.

(2) The governing body shall prepare a statement showing the number of of votes cast for and against the levy of such tax and declaring the result of the election, which statement shall be signed by a majority of the members of the governing body and delivered to the clerk or recording officer who shall record it in the minutes of the governing body and file the original in his office and publish it once in a newspaper of general circulation in such city, town or county.

(3) No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever except in an action or proceeding commenced within thirty days after the publication of such statement.

(c) If a majority of the qualified voters voting on such question in such election shall vote in favor of the levy of such tax, the governing body of such city, town or county is hereby authorized and empowered to levy and collect the special tax so approved, such tax to be in addition to all taxes authorized by any other special or general act, and such special tax within the limit approved by the voters shall be levied and collected as other general taxes are levied and collected on all the taxable property in such city, town or county. The funds so derived from the levy of such tax shall be expended exclusively for the purposes for which it is voted.

(d) In any city, town or county in which a special tax for the purposes herein authorized has been voted under this chapter or under any other general, public-local or private law, the governing body thereof may submit to the voters of such city, town or county the question of an increase or decrease of such tax in the manner and within the limitations of this chapter. (1965, c. 832, s. 1.)

Editor's Note. — Section 2 of the act adding this section provides: "Any steps and proceedings heretofore taken by any city, town or county in connection with submitting to the voters thereof the question of levying a special tax for the purposes herein authorized and any election hereafter held pursuant to such steps and proceedings heretofore taken and any election heretofore held for such purpose are hereby in all respects ratified, appoved, confirmed and validated."

ARTICLE 2.

State Regulation.

§ 63-15. Collision of aircraft.

Any recovery for wrongful death must be based on actionable negligence under the general rules of tort liability. Mann v. Henderson, 261 N.C. 338, 134 S.E.2d 626 (1964).

Causal Connection between Negligence and Injury.—There must be a causal connection between the negligence complained of and the injury inflicted. Mann v. Henderson, 261 N.C. 338, 134 S.E.2d 626 (1964).

Res Ipsa Loquitur Inapplicable.—In a case involving an airplane crash the doctrine of res ipsa loquitur does not apply, it being common knowledge that airplanes do fall without fault of the pilot. Mann v. Henderson, 261 N.C. 338, 134 S.E.2d 626 (1964).

§ 63-16. Jurisdiction over crimes and torts.

Cited in Mann v. Henderson, 261 N.C. 338, 134 S.E.2d 626 (1964).

§ 63-20. Qualifications of operator; federal license.

Federal Regulations Specifically Made Applicable to Intrastate Flying. — See Mann v. Henderson, 261 N.C. 338, 134 S.E.2d 626 (1964).

ARTICLE 6.

Public Airports and Related Facilities.

§ 63-48. Definitions; singular and plural.

One purpose of the 1945 act enacting this article was to make uniform the law with reference to public airports. Harrelson v. City of Fayetteville, 271 N.C. 87, 155 S.E.2d 749 (1967).

§ 63-49. Municipalities may acquire airports.

Franchise for Limousine Service to Airport.—See same catchline in note to § 63-2.

§ 63-50. Airports a public purpose.

Franchise for Limousine Service to Airport.—See same catchline in note to § 63-2.

§ 63-51.1. Tax exemptions.—Any airport authority, airport board or airport commission created as a separate and independent body corporate and politic by an act of the General Assembly or by counties and/or municipalities pursuant to an act of the General Assembly shall be exempt from the payment of any taxes or fees upon its real and personal property to the State or any subdivision thereof. For the purpose of such tax exemption, it is hereby declared as a matter of legislative determination that an authority so created is and shall be deemed to be a municipal corporation and all property owned by said authorities, boards and commissions shall be deemed to be held for a public purpose. (1967, c. 1160, s. 3.)

Editor's Note.—Session Laws 1967, c. 1160, s. 3, adding this section, is effective Jan. 1, 1968.

§ 63-53. Specific powers of municipalities operating airports.

Franchise for Limousine Service to Airport.—See same catchline in note to § 63-2.

Chapter 65.

Cemeteries.

ARTICLE 2.

Care of Confederate Cemetery.

§ 65-4. State Department of Correction to furnish labor. — The State Department of Correction is hereby authorized and directed to furnish at such time, or times, as may be convenient, such prisoner's labor as may be available, to properly care for the Confederate Cemetery situated in the city of Raleigh, such services to be rendered by the State's prisoners without compensation. (1927, c. 224, s. 1; 1933, c. 172; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department."

ARTICLE 5.

Removal of Graves.

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

selected by the next of kin, or the welfare officer of the county or the clerk of the superior court in the order named. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reinterring said remains. Due care shall also be taken to remove, protect and replace all tombstones or other markers, so as to leave the new grave in as good condition as the former one. All of said work shall be done under the supervision and direction of the welfare officer of the county, if one, or his representatives; but if no welfare officer, then under the supervision and direction of the clerk of the court, or his representatives. All the expense connected with said work, including the actual expense of one of the "next of kin" in attending to same, shall be borne by the company doing, or causing same to be done.

If the State or any agency thereof or any municipality or other political subdivision of the State, or any school, university or college in this State shall find it necessary in order to perform its governmental or educational function and the duties prescribed by law or under authority of the governing body thereof, to remove graves from property owned by or in the custody and control of the State or such agency thereof or such municipality or other political subdivision, or of a school, university or college in the State, or from property owned by individuals or corporations, whether known or unknown, such graves may be moved by the State or such agency thereof or such municipality or political subdivision, or by such school, university or college, after thirty days' notice to the relatives of the deceased persons, if any are known, and if none are known, then after publication of a notice of such intended removal once a week for four (4) weeks in some newspaper having a general circulation in the county in which such property lies; and such graves when removed shall be removed to a suitable place in another cemetery, due care being taken to protect the tombstones and to place them properly so as to leave the graves in as good condition as before removal. All expense of the removal and acquisition of another burial site shall be borne by the State or the agency thereof or the municipality or political subdivision of the State, or by the school, university or college moving the said graves. (1919, c. 245; C. S., s. 5030; 1927, c. 23, s. 1; 1937, c. 3; 1947, c. 168; 1961, c. 457; 1963, c. 915, s. 1; 1965, c. 71.)

Editor's Note.—

The 1965 amendment added "the State or any agency thereof or" near the beginning of the first sentence in the second paragraph, added "the State or such agency thereof or" twice elsewhere in that sentence and added "the State or the agency thereof or" in the last sentence in the second paragraph.

Article 7.

Cemeteries Operated for Private Gain.

§ 65-18. Cemeteries to which article applies.—This article shall apply to all public cemeteries which may hereafter be established, which are privately owned and operated for private gain or profit notwithstanding whether such public cemeteries advertise or offer perpetual care of grave space in connection therewith. (1943, c. 644, s. 1; 1967, c. 1009, s. 1.)

Editor's Note.—

The 1967 amendment rewrote this section.

§ 65-19. Words and phrases defined.

(b) Cemetery, etc.—When consistent with the context of this article and not obviously used in a different sense, the term "cemetery," "public cemetery," or "owner or owners" of such cemetery, as used in this article, includes only such corporations, associations, partnerships, or individuals, as are engaged in the

operation for private gain or profit of a public cemetery for the interment of the dead of the human race or the sale of grave space or interment rights therein.

(1967, c. 1009, s. 2.)

Editor's Note. — The 1967 amendment deleted "and who advertise or offer perpetual care of grave space in connection therewith" at the end of subsection (b). As the rest of the section was not affected by the amendment, it is not set out.

§ 65-22. Requirements for advertising of perpetual care fund.—No such cemetery shall hereafter cause or permit advertising of perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in said fund from all sales made subsequent to the passage of this article shall be equal to not less than ten dollars per grave space, sold, said sum to be deposited in perpetual care fund as provided in § 65-23, except as provided in G.S. 65-27. (1943, c. 644, s. 5; 1957, c. 529, s. 1; 1967, c. 1009, s. 3.)

Editor's Note.— The 1967 amendment substituted "ten dollars" for "five dollars" and added the exception as to § 65-27 at the end of this section.

§ 65-23. Perpetual care fund to be turned over to trustee; investment of minimum required fund; use of income.—The perpetual care fund of any cemetery licensed hereunder, as hereinafter authorized, shall immediately be turned over to and deposited with a reliable trustee, to be approved by the North Carolina Burial Association Commissioner under an irrevocable trust agreement for safekeeping and for investment as hereinafter provided. The trustee is authorized to invest, sell and reinvest, said fund in such securities as may be approved by the trustee and by the cemetery, said investments may include:

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

(2) Shares, common or preferred stock or securities of any corporation organized under the laws of the United States of America or of any state, the District of Columbia, any territory or possession of the United States of America; provided, however, that not more than fifteen percent (15%) of said funds required by this chapter to be deposited with such trustee shall be invested in stocks or securities of any one corporation, and not more than thirty-three and one-third percent (33⅓%) of said funds shall be invested in stock, either common or preferred. The amount paid for such stock or security shall be determinative of whether the permissible per centum of investment therein has been equaled or exceeded.

(3) Common trust funds maintained by the trustee for the purpose of furnishing investments to itself as fiduciary, as authorized by chapter 36, article 6 of the General Statutes of North Carolina entitled "Uniform Common Trust Fund Act." Investments in common trust funds as defined herein shall not be considered as investment in stock and shall not be subject to limitations provided in subdivision (2) of this section.

The regulations and limitations established by this section shall apply only to so much of the trust funds as are now required or may hereafter be required as a minimum amount to be paid into perpetual care funds.

The income derived from investment of the perpetual care fund required by this section shall be used by the cemetery to defray the expense of upkeep and maintenance of such cemetery. (1943, c. 644, s. 6; 1955, c. 797, s. 1; 1967, c. 1009, s. 4.)

Editor's Note.— The 1967 amendment substituted "expense of upkeep and maintenance" for "expense of development, upkeep and maintenance" near the end of the last paragraph.

§ 65-23.1. Separate fund composed of excess over minimum required perpetual care fund.—If any cemetery licensed under this article shall deposit or shall have heretofore deposited in a perpetual care fund, an amount in excess of that required by contract or by law, such excess shall be separated by the trustee from the perpetual care trust fund required by G.S. 65-23 and placed in a separate fund which shall be an irrevocable trust and designated as Perpetual Care Trust Fund "A," and such excess trust fund shall not be subject to the limitations as to investments as set forth in G.S. 65-23; but said funds shall be invested, sold and reinvested by the trustee in such stocks, bonds, notes, or other securities as the cemetery may direct; and the trustee in connection with investments of such excess funds shall have no responsibility except to carry out the written instructions of the cemetery with respect to such investments; to hold the securities or instruments evidencing the same and to pay to the cemetery the income, if any, derived therefrom less its charges for handling; provided, however, that stocks purchased for investment shall not be purchased for more than the market value as of date of purchase of such stock. The income received by the cemetery from the excess trust fund (fund "A") shall be used only for the upkeep and maintenance of the cemetery. Provided, however, that nothing contained herein shall permit the investment of perpetual care trust funds in stocks, bonds, or debentures of any cemetery as defined in this chapter. (1955, c. 797, s. 2; 1967, c. 1009, s. 5.)

Editor's Note. — The 1967 amendment deleted "development" near the end of the second sentence.

§ 65-24. Amount set aside in perpetual care fund; use of income.—Such cemetery shall set aside in its perpetual care fund not less than ten dollars per grave space hereafter sold. The income only derived from the investment of such fund may be used to defray expense of upkeep and maintenance of such cemetery. Provided that for the purpose of this section a grave space shall be considered to be sold at such time as the purchaser thereof has acquired unconditional right of interment therein. (1943, c. 644, s. 7; 1955, c. 258, s. 1; 1957, c. 529, s. 6; 1967, c. 1009, ss. 6, 7.)

Editor's Note.—

The 1967 amendment substituted "ten dollars" for "five dollars" in the first sentence and deleted "development" near the end of the second sentence.

§ 65-25: Repealed by Session Laws 1967, c. 1009, s. 8.

§ 65-26. License and provision for perpetual care requisite for establishment of cemetery; procedure for obtaining license; appeal from approval or denial of application; dedication of approved cemetery.—(a) No corporation, association, partnership or individual shall, after the ratification of this article, be permitted to establish or operate a public cemetery for private gain or profit without first having obtained a license therefor, as provided in this article, and without providing for the perpetual care of such cemetery in accordance with the terms of this article. Written application, duly verified under oath, must be filed with the North Carolina State Burial Association Commissioner and include the following information:

(1) The name and principal address of the person or persons, partnership, association or corporation seeking to establish such cemetery.

(2) The names and addresses of all individuals known or proposed to be members of such partnership or association or officers or directors of such corporation, or investors in the cemetery's financing.

(3) The city or town, and the county in or near which the cemetery is to be located, and a clear description of the location of such proposed cemetery.

(4) A description, by metes and bounds, of the acreage tract of such proposed cemetery, together with evidence, by title insurance policy or by certificate of an attorney at law, certifying that the applicant is the owner in fee simple of such tract of land, which must contain not less than 30 acres, and that the title is free and clear of all encumbrances. In counties with a population of less than 35,000 population according to the latest federal decennial census, the tract need be only 15 acres.

(5) A perpetual care trust fund agreement, with an initial deposit of not less than fifteen thousand dollars ($15,000.00) and with bank cashier's check or certified check attached for such amount and payable to such trustee, with said trust executed by applicant and accepted by the trustee, conditionally only upon whether the application is approved.

(6) Said application must also contain a plat of the cemetery showing the number and location of all lots which may then be actually surveyed and permanently staked for sale.

(b) Upon receipt of said application and documents, the Commissioner shall set a date for a hearing upon said application, to be held in the Commissioner's office or in the county of the location of the proposed cemetery, as deemed for the public interest, in the Commissioner's discretion. At least 30 days' written notice of said hearing shall be given to the applicant. Also, notice of the time and place of said hearing shall be published on two successive weeks, the second of said notices being published at least 10 days prior to said hearing, in a newspaper in general circulation in the county in which said cemetery is proposed to be located. If there is no newspaper in general circulation in the county in which it is proposed the cemetery be located, notice of the time and place of said hearing shall be posted at the courthouse of the county of the proposed location and one other public place in said county at least 20 days prior to the time of said hearing. At such hearing opportunity to be heard shall be given to the applicant, to any other cemetery and to any other persons as to whether applicant has complied with all requirements of law. After such hearing if the Commissioner finds that the applicant has complied with all requirements of law, he shall issue an order approving said application, and if he finds such applicant has failed to comply with all requirements of law, he shall deny the application. In either case he shall send notice thereof and his reasons, to the applicant and a copy thereof to any other persons who may have filed written objection with the Commissioner to the approval of said application. Within 10 days after the Commissioner's mailing such notice of approval or nonapproval of such application, the applicant or any other person affected by the decision may file notice of appeal from the Commissioner's ruling, to the superior court of the county in which the cemetery is to be located, said appeal notice to be filed with the Commissioner and also with the clerk of superior court of said county. Except as herein otherwise provided, on any such appeal the judicial review of the Commissioner's ruling shall be as provided in article 33 of chapter 143 of the General Statutes. If the Commissioner's ruling is sustained by final court action in such judicial review, the costs of such appeal shall be taxed against the person who may have taken such appeal. If no such appeal is filed within such time, the Commissioner's order shall become final. If the final order approves the application, then:

(1) The applicant shall cause all the land acreage described in the application to be dedicated permanently and irrevocably to cemetery purposes only (if not already so dedicated) by proper instrument, in form approved by the Commissioner, and registered in the land records of the county or counties where the land lies, and

(2) When the Commissioner has received satisfactory evidence that the applicant and the tract of land still comply with the requirements of subdivision (a) (4) including continued free and clear title, then the license shall be issued and the cemetery may be opened, and said initial perpetual care fund is to be in addition to the amount in dollars per

grave space as required by law to be deposited in such fund. Said perpetual care fund and all additions thereto shall be held and invested as required under § 65-23 and any other provisions of chapter 65.

If approval of said application is not granted, the perpetual care trust document shall be promptly returned and the fifteen thousand dollars ($15,000.00) refunded to the applicant. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9.)

Editor's Note.—
The 1967 amendment rewrote this section.

§ 65-27. Disposition of deposits when perpetual care fund amounts to $100,000.00.—When the amount deposited in the perpetual care fund required by G.S. 65-23 of any cemetery heretofore or hereafter established shall amount to one hundred thousand dollars ($100,000.00), anything in this article to the contrary notwithstanding, the cemetery may make all deposits thereafter either into the original perpetual care trust fund or into fund "A," as described in § 65-23.1 of this article and invested as therein authorized, and said deposits shall be not less than five dollars ($5.00) per grave space. (1943, c. 644, s. 10; 1957, c. 529, s. 4; 1967, c. 1009, s. 10.)

Editor's Note.—
Prior to the 1967 amendment deposits received after the perpetual care fund reached $100,000.00 were not less than two dollars per grave space and were deposited in said fund.

§ 65-28: Repealed by Session Laws 1967, c. 1009, s. 11.

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

All books and records of the cemetery shall be kept up to date and at the principal office of the cemetery. The books and records of the cemetery which relate to its obligations for making deposits into the perpetual care fund or funds, and the condition of said trust funds and investments, shall be made available to the Commissioner or his authorized representative, during regular business hours.

In the event any cemetery fails to maintain its books and records so as to reasonably, accurately and completely reflect the deposits and also the condition of said trust funds as referred to above, and fails to correct the same within 60 days after written demand by the Commissioner for such correction, then the Commissioner is authorized in his discretion to suspend said cemetery's license until such failure shall have been corrected. (1943, c. 644, s. 13; 1945, c. 351, s. 1; 1967, c. 1009, s. 12.)

Editor's Note.—
The 1967 amendment added the second and third paragraphs.

§ 65-31. Violation of article a misdemeanor.—In addition to the penalties provided in G.S. 65-34, any cemetery, manager, owner, employee or agent thereof who wilfully violates any of the provisions of this article shall be guilty of a misdemeanor and fined and imprisoned, or both, in the discretion of the court. (1943, c. 644, s. 14; 1967, c. 1009, s. 13.)

Editor's Note.—The 1967 amendment rewrote this section.

§ 65-32. Licenses for persons selling grave space; revocation; sales activities prohibited prior to licensing of cemetery.—All persons offering to sell grave space under any plan herein authorized shall be licensed by said Commissioner without payment of any license fee, and such license, for good cause shown, may, in the discretion of the Commissioner, be revoked. No cemetery, manager, owner, employee or agent thereof, shall sell, offer for sale, advertise or do any overt act to sell grave space in a cemetery unless the cemetery shall have first obtained a license from the Commissioner. (1943, c. 644, s. 15; 1967, c. 1009, s. 14.)

Editor's Note. — The 1967 amendment added the second sentence.

§ 65-34.1. Legal notice; receiverships.—In the event the Commissioner is unable to have legal notice or process served on any officer or general manager of a cemetery for the purpose of a hearing or legal action, then the Commissioner may obtain service of notice or process upon the Secretary of State, as provided under existing law, and shall have legal authority to petition the superior court for a receivership for such cemetery to protect the interest of the owners of burial rights in said cemetery and of all other persons having an interest in said cemetery. The receiver shall have such authority and take such actions as the court may direct.

This section shall be in addition to all other penalties and remedies under this chapter. (1967, c. 1009, s. 15.)

§ 65-36. Assessments for expenses of supervision.—In order to meet the expenses of the supervision of the cemeteries herein provided for, the Burial Association Commissioner shall, annually, assess each cemetery operating under the terms of this article the sum of sixty dollars ($60.00) plus an amount calculated in proportion to the number of grave spaces sold (as defined in this article 7) in the preceding year so that the total assessments on all cemeteries, including the sixty dollar ($60.00) basic assessment, shall in the aggregate amount to twenty per centum (20%) of the total budget of the Burial Association Commissioner as approved by the Director of the Budget and the Advisory Budget Commission, not to exceed fourteen thousand dollars ($14,000.00). Said amount shall be deposited and commingled with all other funds coming into the hands of the Burial Association Commissioner and he may use said sum of money derived from this section in the discharge of the duties delegated to him by the laws of North Carolina. The assessments provided for in this section shall be due and payable on the first day of July, 1967, and on the first day of July of each and every year thereafter. If any cemetery shall fail or refuse to pay the said assessment to the Burial Association Commissioner within 30 days after the making of said assessment, then and in that event the said Burial Association Commissioner is hereby directed and empowered to cancel the license of such cemetery. (1945, c. 351, s. 2; 1955, c. 258, s. 2; 1967, c. 1009, s. 16.)

Editor's Note.— The 1967 amendment rewrote this section, increasing the basic assessment and the total assessments.

Chapter 66.

Commerce and Business.

Article 1.

Regulation and Inspection.

§ 66-11. Dealing in certain metals regulated; purchasing from minors; violations of section misdemeanor.—Every person, firm, or corporation buying railroad brasses or any composition metal specially used in the operation of trains, or brasses, composition metals, or copper or aluminum of the kind or quality used by manufacturing or power plants or by the communication industry, or any copper, brass or bronze of whatever kind or description, shall keep a register and shall insert therein a true and accurate record of each purchase, showing the name, address and driver's license number, the make and type of vehicle hauling said scrap, together with the license plate number thereon, of the person from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon such metal. Such records shall be kept at the place of business of the person, firm or corporation and shall be open to inspection by any law officer. The register shall be at all times open to the inspection of the public. Any person or dealer buying or selling metals without complying with this section shall be guilty of a misdemeanor; and any person making a false entry in such register shall be guilty of a misdemeanor. Every person, firm, or corporation who shall buy or receive any such metals from persons under twenty-one years old, or who shall buy or receive any such metals after the same have been broken up and the marks or brands obliterated, shall be guilty of a misdemeanor; and every person buying, receiving or selling, or offering for sale metals broken into small pieces, or so broken as to obliterate the marks or brands, shall be prima facie presumed to have received such metals knowing the same to have been stolen. (1907, c. 464; 1909, c. 855, s. 1; C. S., s. 5091; 1967, c. 792.)

Editor's Note.—The 1967 amendment rewrote the first sentence and inserted the present second sentence.

Article 4A.

Safety Features of Hot Water Heaters.

§ 66-27.1. Certain automatic hot water tanks or heaters to have approved relief valves; installation or sale of unapproved relief valves forbidden. (a) No individual, firm, corporation or business shall install, sell or offer for sale any automatic hot water tank or heater of 120 gallon capacity or

less which does not have installed thereon by the manufacturer of such tank or heater an American Society of Mechanical Engineers and National Board of Boiler and Pressure Vessel Inspectors approved type pressure-temperature relief valve set at or below the safe working pressure of the tank as indicated, and so labeled by the manufacturer's identification stamped or cast upon the tank or heater or upon a plate secured to it.

(b) No individual, firm, corporation or business shall install, sell, or offer for sale any relief valve, whether it be pressure type, temperature type or pressure-temperature type, which does not carry the stamp of approval of the American Society of Mechanical Engineers and the National Board of Boiler and Pressure Vessel Inspectors. (1965, c. 860, s. 1; 1967, c. 453.)

Editor's Note. — Section 6 of the act from which this article was codified makes it effective Jan. 1, 1966.

The 1967 amendment inserted "set at or below the safe working pressure of the tank as indicated" near the end of subsection (a).

§ 66-27.2. Certain hot water supply storage tank or heater baffles, heat traps, etc., to be tested before installation or sale.—(a) No individual, firm, corporation or business shall install, sell or offer for sale any hot water supply storage tanks or heaters of 120 gallon capacity or less which utilize dip tubes, supply and hot water nipples, supply water baffles or heat traps that have not been tested to withstand a temperature of 400 degrees Fahrenheit without deteriorating in any manner, and such tank or heater so labeled by the manufacturer.

(b) No individual, firm, corporation or business shall install, sell, or offer for sale any water baffles or heat traps, which are not constructed and tested to withstand a temperature of 400 degrees Fahrenheit without deterioration in any manner and such baffles or heat traps to be so labeled by the manufacturer. (1965, c. 860, s. 2.)

§ 66-27.3. Violation of article made misdemeanor.—Violation of any provision of this article is hereby made a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1965, c. 860, s. 3.)

§ 66-27.4. Local regulation of hot water heater safety features.—Nothing in this article shall be interpreted as relieving any individual, firm, corporation or business from complying with additional protective regulations relating to the safety features of hot water heaters as may be prescribed by local law, county or municipal charter or ordinance; provided, however, that no local law, county or municipal charter or ordinance shall fix or govern the temperature or pressure settings of a pressure-temperature relief valve on an automatic hot water tank or heater covered by this article if there is installed on such tank or heater a pressure-temperature relief valve having settings in compliance with the North Carolina Building Code. (1965, c. 860, s. 4.)

Article 13.

Miscellaneous Provisions.

§ 66-67. Disposition by laundries and dry cleaning establishments of certain unclaimed clothing.—If any person shall fail to claim any garment, clothing, household article or other article delivered for laundering, cleaning or pressing to any laundry or dry cleaning establishment as defined in G.S. 105-85, or any dry cleaning establishment as defined in G.S. 105-74, for a period of sixty days after the surrender of such articles for processing, the laundry or dry cleaning establishment shall have the right to dispose of such garments, clothing, household articles or other articles by whatever means it may choose, without liability or responsibility to the owner. Provided, however, that before such

laundry or dry cleaning establishment may claim the benefit of this section it shall at the time of receiving such garments, clothing,, household articles or other articles, have a notice of dimensions of not less than 8½ by 11 inches, prominently displayed in a conspicuous place in the office, branch office or retail outlet where said clothes, garments or articles are received, if the same be received at an office, on which notice shall appear the words "NOT RESPONSIBLE FOR GOODS LEFT ON HAND FOR MORE THAN SIXTY DAYS": Provided further, that any garment or clothing or other article of a value of more than one hundred and fifty dollars ($150.00) may not be disposed of for a period of two years after the surrender of such articles for processing, in which case such garments, clothing or other articles may be disposed of 30 days after a notice thereof has been sent by registered or certified mail, with return receipt requested, to the last known address of the owner of such garment, clothing or other article; provided further, that the provisions of this section shall also be applicable with respect to the storage of garments, furs, rugs, clothing or other articles after the completion of the period for which storage was agreed to be provided. (1947, c. 975; 1953, c. 1054; 1967, c. 931.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, substituted "sixty days" for "four months" in the first sentence, "8½ by 11" for "12 by 18" and "SIXTY DAYS" for "FOUR MONTHS" in the first proviso and "one hundred and fifty dollars ($150.00)" for "seventy-five dollars ($75.00)" in the second proviso and inserted "or certified" between "registered" and "mail" in the second proviso.

Article 14.

Business under Assumed Name Regulated.

§ 66-68. Certificate to be filed; contents.—(a) Before any person or partnership other than a limited partnership engages in business in any county in this State under an assumed name or under any designation, name or style other than the real name of the owner or owners thereof, or before a corporation engages in business in any county other than under its corporate name, such person, partnership, or corporation must file in the office of the register of deeds of such county a certificate giving the following information:

(1) The name under which the business is to be conducted;

(2) The name and address of the owner, or if there is more than one owner, the name and address of each.

(1967, c. 823, s. 28.)

Cross Reference.—

See Editor's note to § 53-5.

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in subsection (a).

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

Cited in In re Nissen's Estate, 345 F.2d 230 (4th Cir. 1965).

§ 66-69. Index of certificates kept by register of deeds.—Each register of deeds of this State shall keep an index which will show alphabetically every assumed name with respect to which a certificate is hereafter so filed in his county. (1913, c. 77, s. 2; C. S., s. 3299; 1951, c. 381, ss. 4, 7; 1967, c. 823, s. 29.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" and deleted the former last sentence, fixing a fee for indexing and filing.

§ 66-69.1. Copy of certificate prima facie evidence.—A copy of such certificate duly certified by the register of deeds in whose office it has been filed

shall be prima facie evidence of the facts required to be stated herein. (1913, c. 77, s. 2; C. S., s. 3299; 1951, c. 381, ss. 5, 7; 1967, c. 823, s. 30.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court."

ARTICLE 15.

Person Trading as "Company" or "Agent."

§ 66-72. Person trading as "company" or "agent" to disclose real parties.

Quoted in In re Griffin, 225 F. Supp. 482 (W.D.N.C. 1963).

ARTICLE 17.

Closing-Out Sales.

§ 66-84. Counties within article.—This article shall apply only to the following counties: Ashe, Bertie, Buncombe, Burke, Cabarrus, Catawba, Cleveland, Columbus, Craven, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Gaston, Graham, Guilford, Halifax, Haywood, Henderson, Iredell, Jackson, Lee, McDowell, Nash, New Hanover, Northampton, Onslow, Orange, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Sampson, Stanly, Surry, Swain, Transylvania, Union, Wake and Wayne. (1957, c. 1058, ss. 10½, 10¾; 1959, cc. 928, 1089; c. 1251, s. 1; c. 1287; 1963, cc. 205, 738; 1965, cc. 96, 306, 374; 1967, cc. 347, 476, 514.)

Editor's Note.—

The first 1965 amendment inserted the county of Henderson, the second 1965 amendment inserted the county of Iredell, and the third 1965 amendment inserted the counties of Edgecombe and Nash.

The first 1967 amendment inserted the county of Person.

The second 1967 amendment deleted the county of Alamance.

The third 1967 amendment inserted the county of Rockingham.

Chapter 67.

Dogs.

ARTICLE 1.

Owner's Liability.

§ 67-3. Sheep-killing dogs to be killed.

Applied in Belk v. Boyce, 263 N.C. 24, 138 S.E.2d 789 (1964).

ARTICLE 2.

License Taxes on Dogs.

§ 67-5. Amount of tax.

A levy of a license or privilege tax on dogs has been held valid in many decisions of the Supreme Court. In the Matter of Truitt, 269 N.C. 249, 152 S.E.2d 74 (1967).

§ 67-12. Permitting dogs to run at large at night; penalty; liability for damage.

Local Modification. — Forsyth: 1967, c. 918.

§ 67-13. Proceeds of tax to school fund; proviso, payment of damages; reimbursement by owner.—The money arising under the provisions of this article shall be applied to the school funds of the county in which said tax is collected: Provided, it shall be the duty of the county commissioners, upon complaint made to them of injury to person or injury to or destruction of property by any dog, upon satisfactory proof of such injury or destruction, to appoint three freeholders to ascertain the amount of damages done, including necessary treatment, if any, and all reasonable expenses incurred, and upon the coming in of the report of such jury of the damage as aforesaid, the said county commissioners shall order the same paid out of any moneys arising from the tax on dogs as provided for in this article. And in cases where the owner of such dog or dogs is known or can be ascertained, he shall reimburse the county to the amount paid out for such injury or destruction. To enforce collection of this amount the county commissioners are hereby authorized and empowered to sue for the same. Provided, further, that all that portion of this section after the word "collected," in line three, shall not apply to Alamance, Anson, Beaufort, Bladen, Caldwell, Catawba, Chatham, Cleveland, Columbus, Craven, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Gaston, Gates, Graham, Harnett, Hertford, Lincoln, McDowell, Mecklenburg, Moore, Nash, New Hanover, Orange, Pamlico, Perquimans, Person, Robeson, Rowan, Rutherford, Scotland, Stokes, Transylvania, Union, Wake, Wayne and Yadkin counties. (1919, c. 77, s. 7; c. 116, s. 7; C. S., s. 1681; Pub. Loc. 1925, c. 54; Pub. Loc. 1927, cc. 18, 219, 504; 1929, cc. 31, 79; 1933, cc. 28, 387, 477, 526; 1935, c. 402; 1937, cc. 63, 75, 118, 282, 370; 1939, cc. 101, 153; 1941, cc. 8, 46, 132, 287; 1943, cc. 211, 371, 372; 1945, cc. 75, 107, 136, 465; 1947, c. 853, s. 1; 1953, c. 77; c. 367, s. 7; 1955, cc. 111, 134; 1957, c. 46; 1961, c. 659; 1963, c. 266, s. 1; c. 725, s. 1; 1967, c. 587, s. 1.)

Local Modification.—Granville: 1965, c. 464, s. 1.

Session Laws 1967, c. 587, s. 3, repealed Public Laws 1931, c. 283, and Public Laws 1933, c. 547, insofar as they are applicable to Forsyth County.

Editor's Note.—

The 1967 amendment inserted "Forsyth" in the list of counties in the proviso.

This section is constitutional, etc.—

The tax levied on the owner or keeper of a dog over six months of age has been declared valid and constitutional, and its validity perforce extends to the expenditure of the funds, it being the purport of the statute that the funds raised by the tax should be used for school purposes subject to valid claims, established in the manner provided by the act, for injuries and damages caused by dogs. In the Matter of Truitt, 269 N.C. 249, 152 S.E.2d 74 (1967).

Tax Is Sole Source Out of Which Payment May Be Made.—The school fund gets the dogs tax subject to valid claims for injury and damage caused by dogs when the same have been established in the manner provided by the act. Hence, the tax money is earmarked as the source, and the only source, out of which payment of claims may be made. In the Matter of Truitt, 269 N.C. 249, 152 S.E.2d 74 (1967).

Whether Injury Caused by Playful or Angry Act Immaterial.—Whether the injury was caused by a playful or an angry act on the part of the dog would be without significance. In the Matter of Truitt, 269 N.C. 249, 152 S.E.2d 74 (1967).

Appeal to Circuit Court in Forsyth and Guilford Counties Is De Novo. — Under the 1933 amendment to this section, applicable to Forsyth and Guilford counties, the appeal to the superior court from the denial by the county commissioners of a claim for injuries inflicted by a dog is de novo. In the Matter of Truitt, 269 N.C. 249, 152 S.E.2d 74 (1967).

§ 67-14. Mad dogs, dogs killing sheep, etc., may be killed.

Applied in Belk v. Boyce, 263 N.C. 24, 138 S.E.2d 789 (1964).

ARTICLE 5.

Protection of Livestock and Poultry from Ranging Dogs.

§ 67-30. Appointment of county dog warden authorized; salary, etc.; dog damage fund.

Local Modification. — Forsyth: 1967, c. 587, s. 2; Granville: 1965, c. 464, s. 2.

§ 67-31. Powers and duties of dog warden.

Local Modification.—Cumberland: 1967, c. 814.

§ 67-33. Dogs to wear collars; tags; kennel tax.

Local Modification.—Sampson: 1967, c. 171.

§ 67-34. Board of appraisers; payment of damages; subrogation of county in action against dog owner.

Local Modification.—Forsyth: 1967, c. 587, s. 2.

Chapter 68.

Fences and Stock Law.

ARTICLE 3.

Stock Law.

§ 68-35. Condemnation of land for fence.

Editor's Note.—For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

ARTICLE 4.

Stock along the Outer Banks.

§ 68-42. Stock running at large prohibited; certain ponies excepted.

Constitutionality.—

For an article on local legislation in the General Assembly, discussing the Chadwick decision, see 45 N.C.L. Rev. 340 (1967).

Chapter 69.

Fire Protection.

Article 5.

Authority of Firemen.

Sec.

69-39. Authority of firemen; penalty for willful interference with firemen.

Article 6.

Mutual Aid Between Fire Departments.

Sec.

69-40. Authority to send firemen and apparatus beyond territorial limits; privileges and immunities.

ARTICLE 1.

Investigation of Fires and Inspection of Premises.

§ 69-1. Fires investigated; reports; records.

Local Modification.—Guilford: 1965, c. 102.

Article 2.

Fire Escapes.

§ 69-13. Enforcement by Commissioner of Insurance.—The Commissioner of Insurance is charged with the execution of this article, and he or the chief of the fire department is vested with all privileges, duties, and obligations placed upon them in this chapter, in regard to the inspection of buildings, for the purpose of enforcing the provisions of this article in regard to the buildings and requirements herein. Any owner or occupant of premises failing to comply with the provisions of this article, in accordance with the orders of the authorities above specified, shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars nor more than fifty dollars for each day's neglect. If any owner or lessee of any building referred to in this article shall deem himself aggrieved by any ruling or order of any chief of fire department or local inspector, he may within twenty-four hours appeal to the Commissioner of Insurance, and the cause of complaint shall at once be investigated by the direction of the Commissioner, and unless by his authority the order or ruling is revoked it shall remain in full force and effect and be forthwith complied with by the owner or lessee. (1909, c. 637, s. 6; C. S., s. 6086; 1943, c. 170.)

Editor's Note.—This section is set out in the Supplement to correct an error appearing in the replacement volume.

Article 3A.

Rural Fire Protection Districts.

§ 69-25.11. Changes in area of district.

(1) The area of any fire protection district may be increased by including within the boundaries of the district any adjoining territory upon the application of the owner, or a two-thirds majority of the owners, of the territory to be included, the unanimous recommendation in writing of the fire protection commissioners of said district, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection to the district, and the approval of the board or boards of county commissioners in the county or counties in which said fire protection district is located. However, before said fire protection district change is approved by the county commissioners, notice shall be given once a week for two successive calendar weeks in a newspaper having general circulation in said district, and notice shall be posted at the courthouse door in each county affected, and at three public places in the area to be included, said notices inviting interested citizens to appear at a designated meeting of said county commissioners, said notice to be published the first time and posted not less than fifteen days prior to the date fixed for hearing before the county commissioners.

(4) In the case of adjoining fire districts having in effect a different rate of tax for fire protection, the board of county commissioners, upon petition of two thirds of the owners of the territory involved and after receiving a favorable recommendation of the fire protection commissioners and the boards of directors of the corporations furnishing fire protection in the districts affected, may transfer such territory from one district to another and therefore relocate the boundary lines between such fire districts in accordance with the petition or in such other manner as the board may deem proper. Upon receipt of such petition, the board of county commissioners shall set a date and time for a public hearing on the petition, and notice of such hearing shall be published

in some newspaper having general circulation within the districts to be affected once a week for two weeks preceding the time of the hearing. Such hearings may be adjourned from time to time and no further notice is required of such adjourned hearings. In the event any boundaries of fire districts are relocated under this section, the same shall take effect at the beginning of the next succeeding fiscal year after such action is taken. (1955, c. 1270; 1959, c. 805, s. 5; 1965, cc. 625, 1101.)

Local Modification.—Durham, as to subdivision (2): 1967, c. 791; Orange, as to subdivision (1): 1965, c. 447, amending 1957, c. 302.

Editor's Note.—

The first 1965 amendment inserted "of the district" following "boundaries" near the beginning of subdivision (1), substituted "a two-thirds majority of the owners" for "owners" in the first sentence in that subdivision and added the last sentence therein.

The second 1965 amendment added subdivision (4).

As only subdivisions (1) and (4) were affected by the amendments, the rest of the section is not set out.

ARTICLE 5.

Authority of Firemen.

§ 69-39. Authority of firemen; penalty for willful interference with firemen.—Members and employees of county, municipal corporation, fire protection district, sanitary district or privately incorporated fire departments shall have authority to do all acts reasonably necessary to extinguish fires and protect life and property from fire. Any person, including the owner of property which is burning, who shall willfully interfere in any manner with firemen engaged in the performance of their duties shall be guilty of a misdemeanor and punishable in the discretion of the court. (1965, c. 648.)

ARTICLE 6.

Mutual Aid Between Fire Departments.

§ 69-40. Authority to send firemen and apparatus beyond territorial limits; privileges and immunities.—A county, municipal corporation, fire protection district, sanitary district or incorporated fire department shall have full authority to send, or to decline to send, firemen and apparatus beyond the territorial limits which it normally serves.

When responding to a call and while working at a fire or other emergency outside the territorial limits which it normally serves, members and employees of county, municipal corporation, fire protection district, sanitary district and incorporated fire departments shall have all authority, rights, privileges and immunities, including coverage under the Workmen's Compensation Laws, as they have when responding to a call and while working at a fire or other emergency inside the territorial limits normally served.

A county, municipal corporation, fire protection district, sanitary district, or incorporated fire department, in attending an emergency or answering a call outside the limits of the county, municipal corporation, fire protection district, sanitary district, or other area normally served, shall have all authority, rights, privileges, and immunities that it would have in attending an emergency or answering a call inside the territorial limits normally served. (1965, c. 707.)

Chapter 71.

Indians.

§ **71-2:** Repealed by Session Laws 1967, c. 581, s. 4, effective July 1, 1967.

§ **71-7. Haliwa Indians of North Carolina.**—The Indians now residing in Halifax, Warren and adjoining counties of North Carolina, originally found by the first permanent white settlers on the Roanoke River in Halifax and Warren counties, and claiming descent from certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after April 15, 1965, be known and may be designated as the Haliwa Indians of North Carolina, and they shall continue to enjoy all their rights, privileges and immunities as citizens of the State as now or hereafter provided by law, and shall continue to be subject to all the obligations and duties of citizens under the law. (1965, c. 254.)

§ **71-8. Cherokee Indian trout fishing program generally.**—Subject to the approval of the Secretary of the Interior, representing the National Park Service, the Bureau of Indian Affairs, and the United States Fish and Wildlife Service, the tribal council of the eastern band of the Cherokees shall be responsible for the management of the trout fishery on the waters of the lands presently held in trust for their use and benefit in Jackson and Swain counties. Such management shall include the establishment of creel limits, size limits and choice of bait. (1965, c. 765, s. 1.)

§ **71-9. Trout fishing season on Cherokee Indian Reservation.**—The above management may provide for a trout fishing season beginning with the statewide trout season and extending to the thirty-first day of October. (1965, c. 765, s. 2.)

§ **71-10. Necessity for Cherokee Indian Reservation fishing permit.**—All trout transported from the Cherokee Reservation shall be accompanied by an official Cherokee Indian Reservation fishing permit, bearing on its face the official wildlife seal of the eastern band of the Cherokee nation, the number of the permittee's North Carolina fishing license, the name of the licensee, the number of trout taken and the date of such taking. (1965, c. 765, s. 3.)

§ **71-11. Jurisdiction of Wildlife Resources Commission over Cherokee Indian trout fishing program.**—The North Carolina Wildlife Resources Commission shall not have jurisdiction over the above described tribal trout fishery management program on the above described waters. (1965, c. 765, s. 4.)

§ **71-12. Cessation of federal support of trout fishing program; discontinuance of program by tribal council.**—If at any time the United States Fish and Wildlife Service ceases to support this program by providing the fish or if the tribal council should decide to discontinue this program, such management shall revert to the North Carolina Wildlife Resources Commission. (1965, c. 765, s. 5.)

Chapter 72.

Inns, Hotels and Restaurants.

ARTICLE 1.

Innkeepers.

§ 72-1. Must furnish accommodations.

This section does no more than state the common-law duty of an innkeeper. Waugh v. Duke Corp., 248 F. Supp. 626 (M.D.N.C. 1966).

Duty to Protect from Unreasonable Risk of Physical Harm.—The proprietor of an inn or motel, although not an insurer of the safety of his guests, even his infant guests, is under an affirmative duty to protect his guests from an unreasonable risk of physical harm. Waugh v. Duke Corp., 248 F. Supp. 626 (M.D.N.C. 1966).

The duty of an innkeeper to a guest who is an infant is a greater duty than that owing to his adult guests and he is bound to consider whether his premises, although safe enough for an adult, present any reasonably avoidable dangers to his infant guest. Waugh v. Duke Corp., 248 F. Supp. 626 (M.D.N.C. 1966).

When a child of tender years is accepted as a guest, the inexperience and the natural tendencies of such a child become a part of the situation and must be considered by the innkeeper. This does not mean that the innkeeper becomes the nurse of the child, or assumes its control when accompanied by its parents, but only that he is bound to consider whether his premises, though safe enough for an adult, present any reasonably avoidable dangers to the child guest. Waugh v. Duke Corp., 248 F. Supp. 626 (M.D.N.C. 1966).

Duty to Warn Infant Guests of Hidden Perils.—An innkeeper is required to give warning of hidden perils. His duty to give such warning is increased when infant guests are present. Waugh v. Duke Corp., 248 F. Supp. 626 (M.D.N.C. 1966).

Negligence with Respect to Glass Panel.—An innkeeper, by failure to warn an infant guest of the hidden danger of a glass panel or to place thereon such markings as would indicate the presence of the glass to infant or failure to construct guards around the panels, was negligent. Waugh v. Duke Corp., 248 F. Supp. 626 (M.D.N.C. 1966).

ARTICLE 5.

Sanitation of Establishments Providing Food and Lodging.

§ 72-47. Inspections; report and grade card.

Inspection Report Depriving Restaurant Operator of Freedom of Choice.—An inspection report, promulgated under this article, making provisions for toilet facilities "for each sex and race" was held sufficient to constitute State action depriving the operator of a restaurant of a freedom of choice with respect to the patrons he could serve. State v. Fox, 263 N.C. 233, 139 S.E.2d 233 (1964) (reversing trespass convictions of "sit-in" demonstrators).

In accordance with mandate of the Supreme Court of the United States, conviction of defendant of trespass in wilfully refusing to leave the restaurant after being requested to do so by the management was reversed on the ground that the inspection form of the State Board of Health providing for toilet facilities separate for each race constituted State action depriving the operator of the restaurant of freedom of choice as to patrons he could serve. State v. Fox, 263 N.C. 233, 139 S.E.2d 233 (1964).

Chapter 74.

Mines and Quarries.

Article 5.
Interstate Mining Compact.

Article 5.

Interstate Mining Compact.

§ 74-37. Compact enacted into law.—The Interstate Mining Compact is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

Article I. Findings and Purposes

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(3) Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources; but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The purposes of this compact are to:

(1) Advance the protection and restoration of land, water and other resources affected by mining.

(2) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.

(3) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(4) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the

improvement, restoration or protection of such land and other resources.

(5) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II. Definitions

As used in this compact, the term:

(1) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on site farming or construction.

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

ARTICLE III. State Programs

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(1) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

(2) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

(3) The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.

(4) The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

ARTICLE IV. Powers

In addition to any other powers conferred upon the Interstate Mining Commission, established by Article V of this compact, such commission shall have power to:

(1) Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

(2) Study the conservation, adaption, improvement and restoration of land and related resources affected by mining.

(3) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.

(4) Gather and disseminate information relating to any of the matters within the purview of this compact.

(5) Cooperate with the federal government and any public or private en-

tities having interests in any subject coming within the purview of this compact.

(6) Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact.

(7) Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.

(8) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V. The Commission

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the commission." The commission shall be composed of one commissioner from each party state who shall be Governor thereof. Pursuant to the laws of his party state, each Governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a Governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the Governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Article IV-3, IV-7, and IV-8 or requesting, accepting or disposing of funds, services, or other property pursuant to this paragraph, Articles V (g), V (h), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting: Provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old

age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission 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.

(h) The commission 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 or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission 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.

(j) The commission annually shall make to the Governor, legislature and advisory body required by Article V (a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE VI. Advisory, Technical and Regional Committees

The commission shall establish such advisory and technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII. Finance

(a) The commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislalature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: One-half in equal shares; and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available

to it under Article V (h) of this compact: Provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

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

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Entry into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any four 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 one year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors 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 IX. Effect on Other Laws

Nothing in this compact shall be construed to limit, repeal or supersede any other law of any party state.

Article X. 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. (1967, c. 946, s. 1.)

§ 74-38. Mining council; commission to file copies of bylaws with State Geologist.—(a) The "mining council," hereinafter called the council, is hereby established in the office of the Governor. The council shall be the advisory body referred to in Article V (a) of the Interstate Mining Compact. No member of the council shall receive any compensation on account of his service thereon, but any such member shall be entitled to reimbursement for expenses actually incurred by him in connection with his service as the Governor's alternate on the Interstate Mining Commission, or in attending meetings of the council.

(b) The council shall be composed of 13 members. One member shall be the State Geologist, one member the chairman of the laboratory advisory committee of the North Carolina State University Minerals Research Laboratory, and one

member the chairman of the mineral resources committee of the Board of Conservation and Development. Three members, appointed by the Governor, shall be representatives of mining industries and three members, appointed by the Governor, shall be representatives of nongovernmental conservation interests, and two members shall be appointed by the Governor to represent the Board of Water and Air Resources who shall be knowledgeable in the principles of water and air resources management. One member shall be a member of the North Carolina Senate to be appointed by the Lieutenant Governor and one member shall be a member of the North Carolina House of Representatives to be appointed by the Speaker of the House. Any public official appointed to the board shall serve ex officio.

Of the eight members on the council appointed by the Governor, four shall be appointed for terms of six years, two shall be appointed for terms of four years, and two shall be appointed for terms of two years. The members appointed by the Lieutenant Governor and the Speaker of the House of Representatives shall serve for terms of two years. The term of each member of the council shall commence as of July 1, 1967, and shall expire on June 30 of the year in which his term expires. Any vacancy occurring on the council by death, resignation or otherwise shall be filled for the unexpired term of the person creating the vacancy by the Governor, the Lieutenant Governor or the Speaker of the House of Representatives, as the case may be.

(c) In accordance with Article V (i) of the compact, the commission shall file copies of its bylaws and any amendments thereto with the State Geologist. (1967, c. 946, s. 2.)

Chapter 74A.

Company Police.

§ 74A-1. Governor may appoint and commission special police; civil liability of companies or corporations for which appointed.—Any educational institution or hospital, whether State or private, or any other State institution, public utility company, construction company, manufacturing company, auction company, incorporated security patrols or corporations engaged in providing security or protection services for persons or property, may apply to the Governor to commission such persons as the institution, corporation or company may designate to act as policemen for it. The Governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such company or corporation from any civil liability for the acts of such policemen, in exercising or attempting to exercise the powers conferred by this chapter. (1871-2, c. 138, ss. 51, 52; Code, ss. 1988, 1989; Rev., ss. 2605, 2606; 1907, c. 128, s. 1; C. S., s. 3484; 1923, c. 23; 1933, c. 61; 1943, c. 676, ss. 1, 4; 1947, c. 390; 1963, c. 1165, s. 2; 1965, cc. 297, 581.)

Editor's Note.—

The first 1965 amendment rewrote the first sentence and inserted "or corporation" in the last sentence.

The second 1965 amendment inserted "auction company" near the beginning of the section.

§ 74A-2. Oath, powers, and bond of company police; exceptions as to railroad police.—(a) Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the usual oath.

(b) Such policemen, while in the performance of the duties of their employment, shall severally possess all the powers of municipal and county police officers to make arrests for both felonies and misdemeanors:

(1) Upon property owned by or in the possession and control of their respective employers; or

(2) Upon property owned by or in the possession and control of any person or persons who shall have contracted with their employer or employers to provide security for protective services for such property; or

(3) Upon any other premises while in hot pursuit of any person or persons for any offense committed upon property vested in subdivisions (1) and (2) above.

(c) Every policeman appointed under this chapter shall, before entering upon the duties of his office, file in the Governor's office a bond in the sum of twenty-five hundred dollars ($2500.00), payable to the State of North Carolina, conditioned upon the faithful performance of the duties of his office. This bond may be in cash, or it may be executed by a surety company duly authorized to transact business in this State, or it may have at least two individual sureties, each owning real estate in this State and together having equities in such real estate over and above any encumbrances thereon equal in value to at least twice the amount of such bond: Provided, that where individual sureties are used, the sufficiency of each such surety must be passed upon and approved by the clerk of the superior court of the county in which the surety resides.

(d) The limitations on the power to make arrests contained in subdivisions (1) (2) (3) of subsection (b) shall not be applicable to policemen appointed for any railroad company. Policemen appointed for railroad companies shall be required to post a bond in the sum of five hundred dollars ($500.00) in lieu of the bond required by subsection (c). (1871-2, c. 138, s. 53: Code, s. 1990; Rev., s. 2607; 1907, c. 128, s. 2; c. 462; C. S., s. 3485; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1943, c. 676, s. 2; 1959, c. 124, s. 1; 1963, c. 1165, s. 2; 1965, c. 872.)

Editor's Note. — The 1965 amendment rewrote this section.

Chapter 75A.

Motorboats.

§ 75A-2. Definitions.

(2) "Operate" means to navigate or otherwise use or occupy a motorboat or vessel, and shall be applicable to any motorboat or vessel that is afloat.

(5) "Vessel" means every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water.

(1965, c. 634, s. 1.)

Editor's Note.—The 1965 amendment, effective Jan. 1, 1966, inserted "or occupy" following "otherwise use," and added all of the language following the word "ves-

sel" in subdivision (2). In subdivision (5) the amendment inserted "or structure" following "watercraft" and "or habitation" following "transportation."

As the rest of the section was not affected by the amendment, it is not set out.

§ 75A-5.1. Commercial fishing boats; renewal of number.—(a) The owner or operator of any commercial fishing boat which is currently licensed for the use of commercial fishing gear under the provisions of § 113-152, shall be entitled to renewal of the certificate of number of such boat when such owner has complied with all of the conditions of this section.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the boat shall submit, and the Wildlife Resources Commission shall require:

(1) The regular application for renewal of the certificate of number of such boat, as provided by G.S. 75A-5;

(2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the boat for which the application for renewal is made is a commercial fishing boat as herein defined; and

(3) A receipt, signed by an authorized agent of the Department of Conservation and Development, and bearing the number awarded to the boat under the provisions of this chapter, showing that the commercial fishing boat license tax imposed by § 113-152 has been paid for such boat for the period during which the application for renewal of the certificate of number is submitted.

(1965, c. 957, s. 8.)

Editor's Note.—

The 1965 amendment substituted "§ 113-152" for "G.S. 113-174.7" in subsection (a) and in subdivision (3) of subsection (c).

As to the effective date of the act, see Editor's note to § 113-127.

As the rest of the section was not affected by the amendment, it is not set out.

§ 75A-6. Classification and required lights and equipment; rules and regulations.

(n) All boats propelled by machinery of 10 hp or less, which are operated on the public waters of this State, shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, and from sunset to sunrise shall carry a white light in the stern or shall have on board a hand flashlight in good working condition, which light shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision. Provided, that the provisions of this subsection shall not be construed so as to conflict with or repeal any of the requirements or provisions set forth elsewhere in this chapter; provided further, that the provisions of this subsection shall not apply to Brunswick, Carteret, Chatham, Columbus, Duplin, Lee, New Hanover, Onslow and Rockingham counties.

(o) The State Board of Health is hereby authorized and directed to prepare design standards that will be used as a guide in approving sewage treatment devices and holding tanks for marine toilets installed in boats operating on the inland fishing waters of the State as designated by the Wildlife Resources Commission and the inland lake waters of the State.

No vessel operating on the inland fishing waters of the State as designated by the Wildlife Resources Commission and the inland lake waters of this State that is equipped with a marine toilet shall be registered by the Wildlife Resources Commission unless such vessel is provided with a sewage treatment device or holding tank approved by the State Board of Health.

All vessels operating on the inland fishing waters of the State as designated by the Wildlife Resources Commission and the inland lake waters of the State that

are equipped with a marine toilet shall be required to provide a sewage treatment device or holding tank approved by the State Board of Health.

The protectors of the Wildlife Resources Commission shall inspect vessels on the inland fishing waters of the State as designated by the Wildlife Resources Commission and the inland lake waters to determine if approved treatment devices or holding tanks are properly installed and if they are operating in a satisfactory manner.

Any boat or vessel equipped with a sewage treatment device or holding tank operated on the inland fishing waters of the State as designated by the Wildlife Resources Commission and the inland lake waters of North Carolina which does not meet the design standards and approval of the State Board of Health prior to January 1, 1966, may continue to use such device or tank until January 1, 1969.

A vessel registered, documented or otherwise licensed in another state and equipped with a marine toilet not prohibited in such state may be operated on the inland fishing waters of the State as designated by the Wildlife Resources Commission, without regard to the provisions of this subsection while making an interstate trip. (1959, c. 1064, s. 6; 1963, c. 396; 1965, c. 634, s. 2; 1967, cc. 230, 1075.)

Editor's Note.—

The 1965 amendment, effective Jan. 1, 1966, added subsection (o).

The first 1967 amendment deleted "Pender" from the list of counties at the end of subsection (n).

The second 1967 amendment, effective Jan. 1, 1968, made subsection (o) applicable to the inland fishing waters of the State as designated by the Wildlife Resources Commission and added the sixth sentence to such subsection.

As the rest of the section was not affected by the amendments, only subsections (n) and (o) are set out.

§ 75A-10. Operating boat or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

Violation of this provision shall be a misdemeanor and subject to penalty as provided in § 75A-18 (a). (1959, c. 1064, s. 10; 1965, c. 634, s. 3.)

Editor's Note.—The 1965 amendment, effective Jan. 1, 1966, added subsection (c).

As the rest of the section was not affected by the amendment, it is not set out.

Cited in In re Howser's Petition, 227 F. Supp. 81 (W.D.N.C. 1964).

§ 75A-11. Duty of operator involved in collision, accident or other casualty.

Cited in In re Howser's Petition, 227 F. Supp. 81 (W.D.N.C. 1964).

§ 75A-14. Regattas, races, marine parades, tournaments or exhibitions.—(a) The Wildlife Resources Commission may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions on any waters of this State. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat, or other boat race, marine parade, tournament, or exhibition is proposed to be held, the person in charge thereof, shall, at least fifteen days prior thereto, file an application with the Wildlife Resources Commission for permission to hold

such regatta, motorboat, or other boat race, marine parade, tournament, or exhibition. The application shall set forth the date, time and location where it is proposed to hold such regatta, motorboat, or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without authorization of the Wildlife Resources Commission in writing. Provided, that camps for boys or girls shall not be required to obtain such authorization for regattas or boat races where no motor power is used.

(1965, c. 437.)

Editor's Note. — The 1965 amendment added the proviso at the end of subsection (a).

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

§ 75A-15. Local regulation; adoption of Uniform Waterway Marking System.

(c) The Uniform Waterway Marking System as approved by the advisory panel of state officials to the merchant marine council, United States coast guard, in October, 1961, is hereby adopted for use on the public waters of North Carolina; and no markers shall be used in the waters of this State in conflict with the marking system prescribed by this subsection. (1959, c. 1064, s. 15; 1965, c. 394.)

Editor's Note. — The 1965 amendment, effective July 1, 1965, added subsection (c).

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

§ 75A-17. Enforcement of chapter.

(b) In order to secure broader enforcement of the provisions of this chapter, the Wildlife Resources Commission is authorized to enter into an agreement with the Department of Conservation and Development whereby the enforcement personnel of the Commercial and Sports Fisheries Division shall assume responsibility for enforcing the provisions of this chapter in the territory and area normally policed by such enforcement personnel and whereby the Wildlife Resources Commission shall contribute a share of the expense of such personnel according to a ratio of time and effort expended by them in enforcing the provisions of this chapter, when such ratio has been agreed upon by both of the contracting agencies. Such agreement may be modified from time to time as conditions may warrant. (1959, c. 1064, s. 17; 1965, c. 957, s. 9.)

Editor's Note. — The 1965 amendment substituted "Commercial and Sports Fisheries Division" for "Commercial Fisheries Division" in the first sentence of subsection (b). As to the effective date of the act, see Editor's note to § 113-127.

As the rest of the section was not affected by the amendment, it is not set out.

§ 75A-18. Penalties.—(a) Any person who violates any provision of §§ 75A-4, 75A-5, 75A-5.1, 75A-6, 75A-8, 75A-9, 75A-10 (c), 75A-11, 75A-13, 75A-14, and 75A-15 or who violates any provision of any rule or regulation adopted under authority of this chapter, shall be guilty of a misdemeanor and shall be subject to a fine not to exceed fifty dollars ($50.00) for each such violation.

(b) Any person who violates any provision of § 75A-10 (a), (b) shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed five hundred dollars ($500.00) or imprisonment for not to exceed six months, or both, for each violation. (1959, c. 1064, s. 18; 1965, c. 634, s. 3; c. 793.)

Editor's Note. — The first 1965 amendment, effective Jan. 1, 1966, inserted "75A-10 (c)" in subsection (a) and added "(a), (b)" following "75A-10" in subsection (b).

The second 1965 amendment rewrote subsection (a), but in so doing gave effect to the change made by the first amendment.

Chapter 76.
Navigation.

Article 1.

Cape Fear River.

§ 76-4. Appointment and regulation of pilots' apprentices.—The board, when it deems necessary for the best interests of the port, is hereby authorized to appoint in its discretion apprentices, and to make and enforce reasonable rules and regulations relating to apprentices. No apprentice shall be required to serve for a longer period than three years in order to obtain a license to pilot vessels of a draught of not exceeding twenty-five feet, and one year thereafter for a license to pilot vessels of a draught of more than twenty-five feet. No one shall be entered as an apprentice who is of the age of more than twenty-five years. (1921, c. 79, s. 4; C. S., s. 6943(d); 1927, c. 158, s. 3; 1967, c. 940, s. 1.)

Editor's Note.— The 1967 amendment substituted "twenty-five feet" for "fifteen feet" in two places in the second sentence.

§ 76-5. Classes of licenses issued.

(1) A license to pilot vessels whose draught of water does not exceed twenty-five feet, to such applicants above the age of twenty-one years who have served as apprentices for such length of time as is required by the rules and regulations of the board to entitle such applicant to such license;

(1967, c. 940, s. 2.)

Editor's Note.— The 1967 amendment substituted "twenty-five feet" for "eighteen feet" in subdivision (1). As the rest of the section was not changed by the amendment, only subdivision (1) is set out.

Chapter 77.
Rivers and Creeks.

Article 1.

Commissioners for Opening and Clearing Streams.

§ 77-10. Draws in bridges.—Whenever the navigation of any river or creek which, in the strict construction of law, might not be considered a navigable stream, shall be obstructed by any bridge across said stream, except those under the supervision and control of the State Highway Commission, it shall be lawful for any person owning any boat plying on said stream to make a draw in such bridge sufficient for the passage of such boat; and the party owning such boat shall construct and maintain such draw at his own expense, and shall use the same in such manner as to delay travel as little as possible. (1879, c. 279, ss. 1, 2; Code, s. 3719; Rev., s. 5307; C. S., s. 7374; 1965, c. 493.)

Editor's Note. — The 1965 amendment inserted "except those under the supervision and control of the State Highway Commission" near the middle of the section.

Chapter 78.

Securities Law.

§ 78-2. Definitions.

Quoted in State v. Franks, 262 N.C. 94, 136 S.E.2d 623 (1964).

§ 78-3. Exempted securities.

(3) Any security representing an interest in and issued by a national bank, or by any federal land bank, or joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July seventeen, nineteen hundred and sixteen, or any amendments thereof, or by the War Finance Corporation, or by any corporation created or acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States, provided, that such corporation is subject to supervision of regulation by the government of the United States.

(1967, c. 1233, s. 1.)

Editor's Note.—

The 1967 amendment inserted "representing an interest in and" near the beginning of subdivision (3).

As the rest of the section was not affected by the amendment, only subdivision (3) is set out.

Questions of Fact. — The questions of whether debentures of a finance company sold to individuals in this State in a given case are exempted securities under this section, and of whether such sales were transactions exempted from the operation under § 78-4, and of whether the debentures sold to individuals in this State in a given case were of a class that should have been registered under § 78-6 before being offered for sale or sold within this State are questions of fact. State v. Franks, 262 N.C. 94, 136 S.E.2d 623 (1964).

Questions of Law. — The questions of what securities are exempted securities under this section, and of what transactions are exempted from the operation of the Securities Law under § 78-4, and of what securities cannot be offered for sale or sold unless registered under § 78-6 are questions of law. State v. Franks, 262 N.C. 94, 136 S.E.2d 623 (1964).

§ 78-4. Transactions exempted from operation of this chapter.

(7) Subscriptions for sales, or negotiations for sales of securities in domestic corporations if no expense is incurred, and no commission, compensation or remuneration is paid or given for, or in connection with the sale or disposition of such securities; provided that:

a. This exemption is available for the offering of only two classes of securities issued by the same corporation; and,

b. The securities of a single class are not offered to more than 25 persons in this State.

(14) Any transaction involving the issuance of a security (i) in connection with an employees' stock purchase, savings, pension, profit sharing or similar benefit plan; or, (ii) in connection with retirement plans for self-employed individuals if that security is issued:

a. By a bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of North Carolina; and,

b. Under a plan established in accordance with the United States Internal Revenue Code: Provided, however, that the Secretary of State may by order deny or revoke the exemption of item (i) or (ii) with respect to a specific security or transaction found to be unlawful, against public policy or contrary to sound business practices. (1925, c. 190, s. 4; 1927, c. 149,

s. 4; 1935, cc. 90, 154; 1955, c. 436, s. 3; 1959, c. 1185; 1967, c. 1233, ss. 2, 3.)

Cross Reference.—See note to § 78-3.

Editor's Note.—

The 1967 amendment rewrote subdivision (7) and added subdivision (14). As the rest of the section was not changed by the amendment, only subdivisions (7) and (14) are set out.

§ 78-5. Burden of proof as to such transactions.

Quoted in State v. Franks, 262 N.C. 94, 136 S.E.2d 623 (1964).

§ 78-6. Registration of securities.

Questions of Fact.—See note to § 78-3.

Questions of Law.—See note to § 78-3.

Stated in Goforth v. Avemco Life Ins. Co., 368 F.2d 25 (4th Cir. 1966).

§ 78-13. Register of qualified securities.

Quoted in State v. Franks, 262 N.C. 94, 136 S.E.2d 623 (1964).

§ 78-19. Dealers and salesmen; registration.

Quoted in State v. Franks, 262 N.C. 94, 136 S.E.2d 623 (1964).

§ 78-23. Violation of chapter; punishment.

"Whoever" Is All Embracive. — The word "whoever," used in this section, is all embracive and includes within its terms corporations, officers and agents of corporations, and all other persons. State v. Franks, 262 N.C. 94, 136 S.E.2d 623 (1964).

And Corporate Officers and Agents May Be Held Criminally Liable Individually.—Any officers, directors, or agents of a corporation actively participating in a violation of the provisions of this section in the conduct of the company's business, or which such conduct they have actively directed, may be held criminally liable individually therefor. State v. Franks, 262 N.C. 94, 136 S.E.2d 623 (1964).

Chapter 80.

Trademarks, Brands, etc.

Article 1.

Trademark Registration Act.

Article 1.

Trademark Registration Act.

§ 80-1. Definitions.—(a) The term "applicant" as used herein embraces the person filing an application for registration of a trademark under this article, his legal representatives, successors or assigns.

(b) The term "mark" as used herein includes any trademark or service mark entitled to registration under this article whether registered or not.

(c) The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.

(d) The term "registrant" as used herein embraces the person to whom the registration of a trademark under this article is issued, his legal representatives, successors or assigns.

(e) The term "service mark" as used herein means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(f) The term "trademark" as used herein means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(g) For the purposes of this article, a mark shall be deemed to be "used" in this State (i) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in the State, and (ii) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this State. (1903, c. 271; Rev., s. 3012; C. S., s. 3971; 1941, c. 255, s. 1; 1967, c. 1007, s. 1.)

Revision of Article.—Session Laws 1967, c. 1007, s. 1, effective Jan. 1, 1968, rewrote this article. Section 2 of c. 1007 provides that the act shall not affect pending litigation. The former provisions of this article were derived from Session Laws 1870-1, c. 253, ss. 1, 2; 1874-5, c. 225; 1903, c. 271; 1935, c. 60; 1941, c. 255, ss. 1-3 and 1943, c. 543.

§ 80-2. Registrability.—A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it

(1) Consists of or comprises immoral, deceptive or scandalous matter; or
(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or
(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
(4) Consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or
(5) Consists of a mark which (i) when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (ii) when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (iii) is primarily merely a surname; provided, however, that nothing in this subdivision (5) shall prevent the registration of a mark used in this State by the applicant which has become distinctive of the applicant's goods or services. The Secretary of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this State or elsewhere for the five years preceding the date of the filing of the application for registration; or
(6) Consists of or comprises a mark which so resembles a mark registered in this State or a mark or trade name previously used in this State by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive. (1903, c. 271; Rev., ss. 3012, 3017; C. S., ss. 3971, 3976; 1941, c. 255, s. 1; 1967, c. 1007, s. 1.)

§ 80-3. Application for registration. — Subject to the limitations set forth in this article, any person who uses a mark, or any person who controls

the nature and quality of the goods or services in connection with which a mark is used by another, in this State may file in the office of the Secretary of State, on a form to be furnished by the Secretary of State, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation;

(2) The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this State by the applicant, his predecessor in business or by another under such control of applicant; and

(4) A statement that the applicant is the owner of the mark and that no other person except as identified by applicant has the right to use such mark in this State either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

The application shall be accompanied by a specimen or facsimile of such mark in triplicate.

The application for registration shall be accompanied by a filing fee of ten dollars ($10.00), payable to the Secretary of State. (1903, c. 271, s. 3; Rev., s. 3014; C. S., s. 3973; 1935, c. 60; 1941, c. 255, s. 2; 1967, c. 1007, s. 1.)

§ 80-4. Certificate of registration.—Upon compliance by the applicant with the requirements of this article, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the State, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this State, the class of goods or services and a description of the goods or services on which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

Any certificate of registration issued by the Secretary of State under the provisions hereof or a copy thereof duly certified by the Secretary of State shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this State. (1903, c. 271, s. 4; Rev., s. 3015; C. S., s. 3974; 1967, c. 1007, s. 1.)

§ 80-5. Duration and renewal.—Registration of a mark hereunder shall be effective for a term of 10 years from the date of registration and shall be renewable for successive terms of 10 years upon application filed within six months prior to the expiration of any term. A renewal fee of ten dollars ($10.00), payable to the Secretary of State, shall accompany the application for renewal of the registration.

The Secretary of State shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration, by writing to the last known address of the registrants.

Any registration in force on January 1, 1968, shall expire 10 years from the date of the registration or of the last renewal thereof hereunder or two years after January 1, 1968, whichever is later, and may be renewed by filing an application with the Secretary of State and paying the aforementioned renewal fee therefor

within six months prior to the expiration of the registration. Until so expired, such registration shall be subject to and shall be entitled to the benefits of the provisions of this article.

All applications for renewals under this article, whether of registrations made under this article or of registrations affected under any prior act, shall be filed with the Secretary of State on a form to be furnished by him specifying the information called for by § 80-3 and shall include a statement that the mark is still in use in this State.

The secretary of State shall notify each registrant of marks under previous acts of the date of expiration of such registrations unless renewed in accordance with the provisions of this article, by writing to the last known address of the registrants at least six months prior to the date of expiration thereof under the provisions of this article. (1967, c. 1007, s. 1.)

§ 80-6. Assignment.—Any mark and its registration hereunder shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the Secretary of State upon the payment of a fee of ten dollars ($10.00) payable to the Secretary of State who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this article shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the Secretary of State within three months after the date thereof or prior to such subsequent purchase. (Rev., s. 3016; C. S., s. 3975; 1967, c. 1007, s. 1.)

§ 80-7. Records.—The Secretary of State shall keep for public examination all assignments recorded under § 80-6 and a record of all marks registered or renewed under this article. (1967, c. 1007, s. 1.)

§ 80-8. Cancellation.—The Secretary of State shall cancel from the register:

(1) After two years from January 1, 1968, all registrations under prior acts which are more than 10 years old and not renewed in accordance with this article;
(2) Any registration concerning which the Secretary of State shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;
(3) All registrations granted under this article and not renewed in accordance with the provisions hereof;
(4) Any registration concerning which a court of competent jurisdiction shall find
    a. That the registered mark has been abandoned or has become incapable of serving as a mark;
    b. That the registrant is not the owner of the mark;
    c. That the registration was granted improperly;
    d. That the registration was obtained fraudulently.
(5) Any registration when a court of competent jurisdiction shall order cancellation thereof. (1967, c. 1007, s. 1.)

§ 80-9. Classification.—The following general classes of goods and services are established for convenience of administration of this article, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services for which, the mark is actually being used comprised in a single class, but in no event shall a single application include goods or services upon or for which the

mark is being used which fall within different classes of goods or services. The Secretary of State shall have the right to amend the classes herein established to conform the same to the classification established for the United States Patent Office as from time to time amended.

The said classes are as follows:

(1) Goods.—

a. Raw or partly prepared materials.
b. Receptacles.
c. Baggage, animal equipments, portfolios, and pocketbooks.
d. Abrasives and polishing materials.
e. Adhesives.
f. Chemicals and chemical compositions.
g. Cordage.
h. Smokers' articles, not including tobacco products.
i. Explosives, firearms, equipments, and projectiles.
j. Fertilizers.
k. Inks and inking materials.
l. Construction materials.
m. Hardware and plumbing and steam-fitting supplies.
n. Metals and metal castings and forgings.
o. Oils and greases.
p. Protective and decorative coatings.
q. Tobacco products.
r. Medicines and pharmaceutical preparations.
s. Vehicles.
t. Linoleum and oiled cloth.
u. Electrical apparatus, machines, and supplies.
v. Games, toys, and sporting goods.
w. Cutlery, machinery, and tools, and parts thereof.
x. Laundry appliances and machines.
y. Locks and safes.
z. Measuring and scientific appliances.
aa. Horological instruments.
bb. Jewelry and precious-metal ware.
cc. Brooms, brushes, and dusters.
dd. Crockery, earthenware, and porcelain.
ee. Filters and refrigerators.
ff. Furniture and upholstery.
gg. Glassware.
hh. Heating, lighting, and ventilating apparatus.
ii. Belting, hose, machinery packing, and nonmetallic tires.
jj. Musical instruments and supplies.
kk. Paper and stationery.
ll. Prints and publications.
mm. Clothing.
nn. Fancy goods, furnishings, and notions.
oo. Canes, parasols, and umbrellas.
pp. Knitted, netted and textile fabrics, and substitutes therefor.
qq. Thread and yarn.
rr. Dental, medical, and surgical appliances.
ss. Soft drinks and carbonated waters.
tt. Foods and ingredients of foods.
uu. Wines.
vv. Malt beverages and liquors.
ww. Distilled alcoholic liquors.
xx. Merchandise not otherwise classified.

yy. Cosmetics and toilet preparations.
zz. Detergents and soaps.

(2) Services.—
a. Miscellaneous.
b. Advertising and business.
c. Insurance and financial.
d. Construction and repair.
e. Communications.
f. Transportation and storage.
g. Material treatment.
h. Education and entertainment. (1967, c. 1007, s. 1.)

§ **80-10. Fraudulent registration.**—Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark in the office of the Secretary of State under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction. (1903, c. 271, s. 5; Rev., s. 3018; C. S., s. 3977; 1967, c. 1007, s. 1.)

§ **80-11. Infringement.**—Subject to the provisions of § 80-13, any person who shall

(1) Use in this State without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this article in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this State of such goods or services;

shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in § 80-12, except that under subdivision (2) hereof the registrant shall not be entitled to recover profits or damages or any penalty unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive. (1903, c. 271, s. 6; Rev., s. 3019; C. S., s. 3978; 1967, c. 1007, s. 1.)

§ **80-12. Civil remedies.**—Any owner of a mark registered under this article may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed; and such court having granted any such injunction or ordered any such payment shall require the defendants to pay to said owner a penalty of not less than two hundred dollars ($200.00) and not more than one thousand dollars ($1,000.00) in addition to such other relief, provided that such court shall have found that said owner shall have registered his mark prior to the date said defendants shall have first used the infringing mark in this State.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this State. (1903, c. 271, s. 8; Rev., s. 3021; C. S., s. 3980; 1941, c. 255, s. 3; 1967, c. 1007, s. 1.)

§ 80-13. Common-law rights.—Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law. (1967, c. 1007, s. 1.)

§ 80-14. Severability of article.—If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this article shall not be affected thereby. (1967, c. 1007, s. 1.)

Chapter 82.

Wrecks.

§ 82-1. Number and boundaries of wreck districts.

Cross Reference.—As to salvage of abandoned shipwrecks and other underwater archeological sites, see §§ 121-22 to 121-28.

Chapter 83.

Architects.

Sec.
83-14. [Repealed.]

§ 83-1. Definitions.

Quoted in North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

§ 83-12. Practice without certificate unlawful.—In order to safeguard life, health and property, it shall be unlawful for any person to practice architecture in this State as defined in this chapter, except as hereinafter set forth, or use the title "Architect" or display or use any words, letters, figures, title, sign, card, advertisement, or other device to indicate that such person practices or offers to practice architecture, or is an architect or is qualified to perform the work of an architect, unless such person shall have secured from the Board a certificate of admission to practice architecture in the manner herein provided, and shall thereafter comply with the provisions of the laws of North Carolina governing the registration and licensing of architects.

Nothing in this chapter shall prevent any person who is qualified under the law as a "registered engineer" from performing such architectural work as is incidental to engineering projects or utilities.

Nothing in this chapter shall be construed to prevent any individual from making plans or data for buildings for himself; nothing in this chapter shall prevent any person from selling or furnishing plans for the construction of any one or two-family residence regardless of size or cost or farm or commercial buildings of a value not exceeding twenty thousand dollars ($20,000.00); provided that such persons preparing plans and specifications for buildings of any kind shall identify such plans and specifications by placing thereon the name and address of the author.

Any person not registered under this chapter, who shall in any way hold himself out to the public as an architect, or practice architecture as herein defined, or seek to avoid the provisions of this chapter by the use of any other designation than the title of "Architect," shall be guilty of a misdemeanor and shall upon conviction be sentenced to pay a fine of not less than one hundred dollars ($100.00)

nor more than five hundred dollars ($500.00) or suffer imprisonment for a period not exceeding three months or both so fined and imprisoned, each day of such unlawful practice to constitute a distinct and separate offense. (1915, c. 270, s. 4; C. S., s. 4996; 1941, c. 369, ss. 1, 2; 1951, c. 1130, s. 3; 1957, c. 794, s. 11; 1965, c. 1100.)

Editor's Note.—

The 1965 amendment substituted "any one or two-family residence regardless of size or cost" for "residence" near the middle of the third paragraph.

For case law survey of cases decided under this section, see 44 N.C.L. Rev. 889 (1966).

A single act of unauthorized practice is sufficient, if shown, to invoke the criminal penalties of § 83-12 or the injunctive relief of § 150-31. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

"Buildings for Himself".—The words "buildings for himself" contained in the express statutory exception are broad and comprehensive, and contain no limitation of any kind. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

The statutory exception, "buildings for himself," contemplates possession by the designer of the building for whatever lawful purpose he may choose. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

If the General Assembly had intended the statutory exception, "buildings for himself," to be limited to buildings actually occupied by the designer, and not for lease and use by the public, it could quite easily have said so. The General Assembly in its wisdom and discretion did not so limit the statutory exception. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

The express statutory exception, pertaining to plans for a person's own building, contains no provision preventing defendant from selling an interest in the building for which he made the plans. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

Included Building on Property Held as Tenants by the Entirety. — Taking into consideration that during the existence of the tenancy by the entirety the husband has the absolute and exclusive right to the control, use, possession, rents, income, and profits of the lands held by him and his wife as tenants by the entirety, when defendant made plans for the construction of an automobile sales and service building upon lands composed of several tracts, title to some of the component tracts being in him, and some in him and his wife as tenants by the entirety, it seems clear that he was making plans for a building for himself within the meaning of the specific exception contained in this section. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

But Not a Church of Which Defendant Was a Member.—Where defendant was a member of the church and title to the land upon which the educational building was constructed was held by five trustees, of whom he was one, and he executed the mortgage to finance the construction of the educational building, the judge's findings of fact clearly showed that defendant made the "plans" for the building for Salem Baptist Church, and not for himself. North Carolina Bd. of Architecture v. Lee, 264 N.C. 602, 142 S.E.2d 643 (1965).

§ 83-14: Repealed by Session Laws 1967, c. 691, s. 59, effective July 1, 1967.

Chapter 84.

Attorneys at Law.

Article 1.

Qualifications of Attorney; Unauthorized Practice of Law.

Sec.

84-4.1. Limited practice of out-of-state attorneys.

Sec.

84-4.2. Summary revocation of permission granted out-of-state attorneys to practice.

Article 1.

Qualifications of Attorney; Unauthorized Practice of Law.

§ 84-2. Persons disqualified.—No clerk of the superior or Supreme Court, nor deputy or assistant clerk of said courts, nor register of deeds, nor sheriff, nor any justice of the peace shall practice law. Persons violating this provision shall be guilty of a misdemeanor and fined not less than two hundred dollars. This section shall not apply to Confederate soldiers. (C. C. P., s. 424; 1870-1, c. 90; 1871-2, c. 120; 1880, c. 43; 1883, c. 406; Code, ss. 27, 28, 110; Rev., ss. 210, 3641; 1919, c. 205; C. S., s. 198; 1933, c. 15; 1941, c. 177; 1943, c. 543; 1965, c. 418, s. 1.)

Editor's Note.—

The 1965 amendment deleted "nor county commissioner" preceding "shall practice law." Section 2(a) of the act provides that it shall not apply to the counties of Alamance, Carteret, Columbus, Davidson, Davie and Iredell.

Section 2, c. 961, Session Laws 1965, provides that the provisions of c. 418, Session Laws 1965, shall not apply to Duplin County.

Session Laws 1967, c. 743, amended Session Laws 1965, c. 418, s. 2(a), by deleting Carteret from the list of counties to which the 1965 act is not applicable.

§ 84-4.1. Limited practice of out-of-state attorneys.—Any attorney regularly admitted to practice in the courts of record of another state and in good standing therein, having been retained as attorney for any party to a legal proceeding, civil or criminal, pending in the General Court of Justice of North Carolina, may, on motion, be admitted to practice in the General Court of Justice for the sole purpose of appearing for his client in said litigation, but only upon compliance with the following conditions precedent:

(1) He shall set forth in his motion his full name, post-office address and status as a practicing attorney in such other state.

(2) He shall attach to his motion a statement, signed by his client, in which the client sets forth his post-office address and declares that he has retained the attorney to represent him in such proceeding.

(3) He shall attach to his motion a statement that unless permitted to withdraw sooner by order of the court, he will continue to represent his client in such proceeding until the final determination thereof, and that with reference to all matters incident to such proceeding, he agrees that he shall be subject to the orders and amenable to the disciplinary actions and the civil jurisdiction of the General Court of Justice in all respects as if he were a regularly admitted and licensed members of the Bar of North Carolina in good standing.

(4) He shall attach to his motion a statement to the effect that the state in which he is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) He shall attach to his motion a statement to the effect that he has associated and has personally appearing with him in such proceeding an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with such legal proceedings, with the same effect as if personally made on such foreign attorney within this State.

(6) Compliance with the foregoing requirements shall not deprive the court of the discretionary power to allow or reject the application. (1967, c. 1199, s. 1.)

§ 84-4.2. Summary revocation of permission granted out-of-state attorneys to practice.—Permission granted under the preceding section [§ 84-4.1] may be summarily revoked by the General Court of Justice, on its own motion and in its discretion. (1967, c. 1199, s. 2.)

ARTICLE 3.

Arguments.

§ 84-14. Court's control of argument.

Discretion of Court.—

Counsel's freedom of argument should not be impaired without good reason, but where both the impropriety and the prejudicial effect are clear, the court should act. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

Reading and Commenting on Reported Cases.—

This section permits counsel, in his argument to the jury, to state his view of the law applicable to the case on trial and to read, in support thereof, from the published reports of decisions of the Supreme Court. It is often necessary for counsel to do so in order that the jury may understand the issue to which counsel's argument on the evidence is addressed. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

In order to make meaningful a statement of a rule of law found in a reported decision, it is sometimes necessary to recount some of the facts which the court had before it when it pronounced the rule in question. For this purpose, counsel, in his argument in a subsequent case, may not only read the rule of law stated in the published opinion in the former case but may also state the facts before the court therein. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

It is not permissible argument for counsel to read, or otherwise state, the facts of another case, together with the decision therein, as premises leading to the conclusion that the jury should return a verdict favorable to his client in the case on trial. This is but an application of the rule that, in his argument to the jury, counsel may not go outside the record and inject into his argument facts of his own knowledge, or other facts not incuded in the evidence. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

The ultimate test is whether the reading from the reported case "would reasonably tend to prejudice either party upon the facts" of the case on trial. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

Applied in Jenkins v. Harvey C. Hines Co., 264 N.C. 83, 141 S.E.2d 1 (1965); Wiles v. Mullinax, 270 N.C. 661, 155 S.E.2d 246 (1967).

ARTICLE 4.

North Carolina State Bar.

§ 84-24. Admission to practice.—The provisions of the law now obtaining with reference to admission to the practice of law, as amended, and the rules and regulations prescribed by the Supreme Court of North Carolina with reference thereto, shall continue in force until superseded, changed or modified by or under the provisions of this article.

For the purpose of examining applicants and providing rules and regulations for admission to the bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of nine members of the bar, elected by the council of the North Carolina State Bar, who need not be members of the council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years: Provided, that the members first elected shall hold office, two for one year, two for two years, and two for three years.

The secretary of the North Carolina State Bar shall be the secretary of the Board, and serve without additional pay. The Board of Law Examiners shall elect a member of said Board as chairman thereof, who shall hold office for such period as said Board may determine.

The examination shall be held in such manner and at such times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the

qualifications of character and general fitness requisite for an attorney and counselor at law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide such assistance as may be required to enable it to perform its duties promptly and properly.

The Board of Law Examiners, subject to the approval of the council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of such change.

All such rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in § 84-21 in relation to the certificate of organization and the rules and regulations of the council.

Whenever the council shall order the restoration of license to any person as authorized by § 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to such person, noting thereon that the same is issued in compliance with an order of the council of the North Carolina State Bar, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G. S. 84-21 or as may be promulgated by the Supreme Court. (1933, c. 210, s. 10; c. 331; 1935, cc. 33, 61; 1941, c. 344, s. 6; 1947, c. 77; 1951, c. 991, s. 1; 1953, c. 1012; 1965, cc. 65, 725.)

Editor's Note.—

The first 1965 amendment increased the number of members of the Board of Law Examiners from seven to nine.

The second 1965 amendment added the fifth paragraph.

§ 84-28. Discipline and disbarment.

The object of the regulations is to protect the public from unethical conduct by one vested with an attorney's license. A well-educated lawyer, whose position and achievement bring trusting persons to his office in a search of guidance and protection has the duty of conducting himself with the highest degree of honor, integrity and ethics. North Carolina State Bar v. Frazier, 269 N.C. 625, 153 S.E.2d 367 (1967).

Council Is Not Limited to Any Particular Source for Information.—The duty of patrolling the conduct of licensed attorneys is placed on the council of the State Bar, and there are no requirements that it shall be limited to any particular source for its information or instigation of proceedings. North Carolina State Bar v. Frazier, 269 N.C. 625, 153 S.E.2d 367 (1967).

And Complaint Need Not Be by Layman or Client.—It is not required that proceedings against an attorney for disbarment or suspension initiated by the council of the State Bar be based upon complaint of a layman or a client defrauded by the attorney. North Carolina State Bar v. Frazier, 269 N.C. 625, 153 S.E.2d 367 (1967).

Duty of Judge on Appeal from Council.—It is the duty of the superior court judge, on appeal from the council, to consider the evidence and give his own opinion and conclusion, both upon the facts and the law. He is not permitted to do this in a perfunctory way, but he must deliberate and decide as in other cases, use his own faculties in ascertaining the truth, and form his own judgment as to fact and law. North Carolina State Bar v. Frazier, 269 N.C. 625, 153 S.E.2d 367 (1967).

Power of Judge with Respect to Report of Council.—Since this section provides that the proceedings in the superior court shall be in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, the judge of the superior court may affirm, amend, modify, set aside, make additional findings, and confirm, in whole or in part, or disaffirm the report of the council.

North Carolina State Bar v. Frazier, 269 N.C. 625, 153 S.E.2d 367 (1967).

Imposition of Greater Punishment on Appeal to Superior Court. — On appeal from disciplinary action taken by the State Bar, an attorney cannot complain that the punishment imposed by the superior court was greater than the punishment imposed by the council of the State Bar from which he had appealed. North Carolina State Bar v. Frazier, 269 N.C. 625, 153 S.E.2d 367 (1967).

Detention of Money or Property.— Inexperience in the legal profession cannot excuse detention of money collected for a client under circumstances which amount to embezzlement. Dishonesty and breach of trust may be committed by anyone, and no person needs a law license or experience in the practice of law to know that dishonesty and crookedness are wrong. North Carolina State Bar v. Frazier, 269 N.C. 625, 153 S.E.2d 367 (1967).

Chapter 85A.

Bail Bondsmen and Runners.

§ **85A-34. Counties subject to chapter.**—This chapter shall apply to the following counties: Beaufort, Buncombe, Caldwell, Cleveland, Greene, Hyde, Iredell, Jackson, Lenoir, McDowell, Madison, Mecklenburg, Person, Richmond, Rutherford, Transylvania, Yadkin and Yancey. (1963, c. 1225, s. 34; 1965, c. 1195; 1967, cc. 384, 433.)

Editor's Note. — The 1965 amendment deleted Columbus and Currituck from the list of counties.

The first 1967 amendment deleted Guilford from the list of counties.

The second 1967 amendment inserted Mecklenburg in the list of counties.

Chapter 86.

Barbers.

Sec.
86-15. Fees collectible by Board.

§ **86-15. Fees collectible by Board.**—The State Board of Barber Examiners shall be entitled to charge and collect the following fees:

For certificate of registration as a barber	$ 8.00
For certificate of registration as an apprentice barber	8.00
For a barbershop permit	8.00
For examination to become a registered barber	15.00
For examination to become a registered apprentice	15.00
For restoration of an expired certificate of a registered apprentice barber or a registered barber	10.00
For restoration of an expired barbershop permit	10.00
For a student's permit	5.00
For the issuance of any duplicate copy of a license, certificate or permit	2.00
For a barber school permit	25.00

Any person, firm or corporation, before establishing or opening a barbershop or a barber school not heretofore licensed by the State Board of Barber Examiners shall make application to the Board on forms to be furnished by the Board, for a permit to operate a barbershop or barber school, and the shop or school of such applicant shall be inspected and approved by the State Board of Barber Examiners, or an agent designated for such purpose by the Board, before such barbershop or barber school shall be opened for business, and it shall be unlawful to open a new

barbershop for the practice of barbering or a barber school until such shop or school has been inspected as heretofore required and determined by the Board to be in compliance with the requirements of or established under this chapter. Upon compliance by the applicant with all requirements set forth in § 86-17 of the General Statutes, the Board shall issue to such applicant the permit applied for. The fee to be paid to the Board for the inspection of a barbershop herein required shall be twenty-five dollars ($25.00). The inspection fee to be paid for the inspection of a barber school herein required shall be one hundred dollars ($100.00).

The fee required for an examination, permit, certificate or inspection must accompany any application for same filed with the Board. All certificates and permits shall be renewed as of the thirtieth day of June of each and every year, and the fee for annual renewal of certificates and permits shall be as set forth in the above schedule. No permit or certificate shall be transferable. Each barbershop and barber school permit shall be conspicuously posted within such shop or school for which same is issued.

All fees paid to and collected by the Board under this chapter shall be used exclusively for the enforcement of this chapter as provided by law. (1929, c. 119, s. 14; 1937, c. 138, s. 4; 1945, c. 830, s. 4; 1951, c. 821, s. 1; 1957, c. 813, s. 3; 1965, c. 513.)

Editor's Note.—
The 1965 amendment, effective June 30, 1965, rewrote this section.

Chapter 87.

Contractors.

Article 7.

North Carolina Well Construction Act.

Article 1.

General Contractors.

§ 87-14. Regulations as to issue of building permits.—Any person, firm or corporation, upon making application to the building inspector or such other authority of any incorporated city, town or village in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, grading or any improvement or structure where the cost thereof is to be twenty thousand dollars ($20,000.00) or more, shall, before he be entitled to the issuance of such permit, furnish satisfactory proof to such inspector or authority that he is duly licensed under the terms of this article to carry out or superintend the same, and that he has paid the license tax required by the Revenue Act of the State of North Carolina then in force so as to be qualified to bid upon or contract for the work for which the permit has been applied; and it shall be unlawful for such building inspector or other authority to issue or allow the issuance of such building permit unless and until the applicant has furnished evidence that he is either exempt from the provisions of this article or is duly licensed under this article to carry out or superintend the work for which permit has been applied;

and further, that the applicant has paid the license tax required by the State Revenue Act then in force so as to be qualified to bid upon or contract for the work covered by the permit; and such building inspector, or other such authority, violating the terms of this section shall be guilty of a misdemeanor and subject to a fine of not more than fifty dollars ($50.00). (1925, c. 318, s. 13; 1931, c. 62, s. 4; 1937, c. 429, s. 7; 1949, c. 934; 1953, c. 809.)

Editor's Note.— This section is set out in the Supplement to correct a typographical error appearing in the replacement volume.

ARTICLE 2.

Plumbing and Heating Contractors.

§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.—(a) Definitions.—For the purpose of this article:

(1) The word "plumbing" is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.

(2) The phrase "heating, group number one" shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.

(3) The phrase "heating, group number two" shall be deemed and held to be the air conditioning system of a building, which provides conditioned air for comfort cooling by the lowering of temperature, requiring, a total of more than 15 motor horse power or a total of more than 15 tons of mechanical refrigeration, in single or multiple units, and air distribution ducts.

(4) The phrase "heating, group number three" shall be deemed and held to be a direct heating system of a building which produces heat to raise the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger and using an air distribution system of ducts.

(5) Any person, firm or corporation, who for a valuable consideration, installs, alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or any combination thereof, as defined in this article, shall be deemed and held to be engaged in the business of plumbing or heating contracting.

(6) The word "contractor" is hereby defined to be a person, firm or corporation engaged in the business of plumbing or heating contracting.

(7) The word "heating" shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.

(8) The obtaining of a license, as required by this article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required.

(b) Eligibility and Examination of Applicants; Necessity for License. — In order to protect the public health, comfort and safety, the Board shall prescribe the standard of efficiency to be required of an applicant for license, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost,

fundamentals of installation and design, fire hazards and related subjects as same pertain to either plumbing or heating; and as a result of such examination, the Board shall issue a certificate of license in plumbing, heating group number one, or heating group number two, or heating group number three, or any combination thereof, to applicants who pass the required examination, and a license shall be obtained, in accordance with the provisions of this article, before any person, firm or corporation shall engage in, or offer to engage in, the business of either plumbing or heating contracting, or any combination thereof. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, and it is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or any combination thereof. Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. A person who fails to pass any examination shall not be re-examined until the next regular examination.

(c) To Whom Article Applies.—The requirements of this article shall apply only to persons, firms or corporations who engage in, or attempt to engage in, the business of plumbing or heating contracting, or any combination thereof, in cities or towns having a population of more than 3500 in accordance with the last official United States census. The provisions of this article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing or heating.

(d) License Granted without Examination.—Persons who were engaged in business as defined in this article, in cities or towns which attained a population of more than 3500, as recorded by the last decennial United States census, and who had paid the required State revenue tax within the census year in which the municipality attained a population of more than 3500, shall be granted a certificate of license in the classification in which they are qualified, without examination, upon documented proof as required by the Board, within 12 months after publication of the last official United States census, and payment of the annual license fee.

(e) Posting License; License Number on Contracts, etc.—The current license issued in accordance with the provisions of this article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities.

(f) License without Examination of Persons Engaged in Business of Heating Group Number Three.—Any person who produces satisfactory evidence on application forms to be provided by said Board, that he resided in the State of North Carolina as of the date of ratification of this act; that he is engaged in the business of heating group number three; and that he has paid the current required State revenue tax, shall be granted a license without examination, to conduct the business of heating group number three, as defined herein, upon completion of an application approved by said Board and payment of the annual license fee; provided however that such application shall have been submitted to said Board on or before one year after July 1, 1967. (1931, c. 52, s. 6; 1939, c. 224, s. 3; 1951, c. 953, ss. 1, 2; 1953, c. 254, s. 2; 1967, c. 770, ss. 1-6.)

Editor's Note.— The 1967 amendment, ratified June 14, 1967, and effective July 1, 1967, rewrote subdivision (4) and added subdivisions

(7) and (8) of subsection (a), inserted "or heating group number three" in subdivision (5) of subsection (a) and in three places in subsection (b), rewrote subsection (d), and added subsection (f).

§ 87-26. Corporations; partnerships; persons doing business under trade name.

(e) It shall be necessary that persons licensed in accordance with the provisions of this section shall exercise general supervision over contracts to completion. (1931, c. 52, s. 12; 1939, c. 224, s. 8; 1957, c. 815; 1967, c. 770, s. 7.)

Editor's Note.— The 1967 amendment, effective July 1, 1967, added subsection (e). As the rest of the section was not changed by the amendment, only subsection (e) is set out.

ARTICLE 6.

Water Well Contractors.

§ 87-82. Counties to which article not applicable; residents can practice in other counties.—This article shall not apply to the following counties: Alexander, Anson, Ashe, Avery, Beaufort, Bladen, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Davie, Duplin, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Guilford, Harnett, Haywood, Henderson, Hoke, Hyde, Iredell, Johnston, Jones, Lincoln, McDowell, Macon, Madison, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Randolph, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Swain, Tyrrell, Washington, Watauga, Wayne, Wilson and Yancey.

The exclusion of the foregoing counties in the operation of this article applies to the operation of residents of the foregoing counties in every county of this State to the end that they can practice their profession notwithstanding a local resident may be required to have a license. (1961, c. 997, ss. 18½, 18¾; c. 1221; 1963, cc. 179, 250, 272, 461; c. 545, ss. 1, 2; c. 557, s. 1; c. 597; c. 682, s. 1; c. 741, s. 1; c. 879; c. 906, s. 1; 1965, cc. 128, 375; 1967, c. 578.)

Editor's Note.— The first 1965 amendment inserted Stokes County, and the second 1965 amendment inserted Guilford County in the list of counties to which the article is not applicable. The 1967 amendment deleted Franklin from the list of counties to which this article is not applicable.

ARTICLE 7.

North Carolina Well Construction Act.

§ 87-83. Short title.—This article shall be known and may be cited as the North Carolina Well Construction Act. (1967, c. 1157, s. 1.)

§ 87-84. Findings and policy.—The General Assembly of North Carolina finds that improperly constructed, operated, maintained, or abandoned wells can adversely affect the public health and the ground-water resources of the State. Consistent with the duty to safeguard the public welfare, safety, health and to protect and beneficially develop the ground-water resources of this State, it is declared to be the policy of this State to require that the location, construction, repair, and abandonment of wells, and the installation of pumps and pumping equipment conform to such reasonable requirements as may be necessary to protect the public welfare, safety, health and ground-water resources. (1967, c. 1157, s. 2.)

§ 87-85. **Definitions.**—As used in this article, unless the context otherwise requires:

(1) "Abandoned well" means a well whose use has been discontinued, or which is in such a state of disrepair that continued use for obtaining groundwater or other useful purpose is impracticable.

(2) "Aquifer" means a geologic formation, group of such formations, or a part of such a formation that is water bearing.

(3) "Artesian well" means a well tapping a confined or artesian aquifer.

(4) "Board" means the North Carolina Board of Water Resources or its successor, unless otherwise indicated.

(5) "Construction of wells" means all acts necessary to construct wells for any intended purpose or use, including the location and excavation of the well; placement of casings, screens and fittings; development and testing.

(6) "Installation of pumps and pumping equipment" means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrances to the well and establishing seals.

(7) "Municipality" means a city, town, county, district, or other public body created by or pursuant to State law, or any combination thereof acting cooperatively or jointly.

(8) "Nonpotable mineralized water" means brackish, saline, or other water containing minerals of such quantity or type as to render the water unsafe, harmful or generally unsuitable for human consumption and general use.

(9) "Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(10) "Polluted water" means water containing organic or other contaminants of such type and quantity as to render it unsafe, harmful or unsuitable for human consumption and general use.

(11) "Pumps" and "pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining groundwater including well seals.

(12) "Repair" means work involved in deepening, reaming, sealing, installing or changing casing depths, perforating, screening, or cleaning, acidizing or redevelopment of a well excavation, or any other work which results in breaking or opening the well seal.

(13) "Water supply well" means any well intended or usable as a source of water supply, but not to include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).

(14) "Well" means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any ground-water reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).

(15) "Well driller," "driller" or "water well contractor" means any person, firm, or corporation engaged in the business of constructing wells.

(16) "Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal. (1967, c. 1157, s. 3.)

§ 87-86. **Scope.**—No person shall construct, repair, or abandon, or cause to be constructed, repaired, or abandoned, any well, nor shall any person install, repair, or cause to be installed or repaired, any pump or pumping equipment contrary to the provisions of this article and applicable rules and regulations, provided that this article shall not apply to any distribution of water beyond the point of discharge from the pump. (1967, c. 1157, s. 4.)

§ 87-87. **Authority to adopt rules, regulations, and procedures.**—The Board shall adopt, and may from time to time amend, rules and regulations not inconsistent with this article governing the location, construction, repair, and abandonment of wells, and the installation and repair of pumps and pumping equipment, and shall be responsible for the administration of this article. With respect thereto it shall:

(1) Hold public hearings, upon not less than 30 days prior notice setting forth the date, place, and time of hearing, and the proposed rules and regulations to be considered at said public hearing, which notice shall be published in one or more newspapers having general circulation throughout the State, in connection with proposed rules and regulations and amendments thereto;

(2) Enforce the provisions of this article, and any rules and regulations not inconsistent with the provisions of this article adopted pursuant thereto;

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this article; and

(4) Issue such additional regulations as may be necessary to carry out the provisions of this article. (1967, c. 1157, s. 5.)

§ 87-88. **General standards and requirements.**—(a) Prior Permission.—Prior permission shall be obtained from the Board for the construction of (i) any water well or of well systems with a designed capacity of one hundred thousand gallons per day or greater; and (ii) of any well in a geographical area where the Board finds, after public hearings, such permission to be reasonably necessary to protect the ground-water resources and the public welfare, safety and health, taking into consideration other applicable State laws; provided, however, that the Board shall not reject any application under this subsection for permission to construct a well except upon the ground that the well would not be in compliance with a provision of this article or with a rule or regulation of the Board adopted pursuant to the provisions of § 87-87 of this article. Notification of approval or rejection of an application for permission to construct a well shall be given the applicant within a period of 15 days after receipt of such application.

(b) Reports.—Any person completing or abandoning any well shall furnish the Board a certified record of the construction or abandonment of such well within a period of 30 days after completion of construction or abandonment.

(c) Prevention of Contamination.—Every well shall be constructed and maintained in a condition whereby it is not a source or channel of contamination of the ground-water supply or any aquifer. Contamination as used herein shall mean the act of introducing into water foreign materials of such a nature, quality, and quantity as to cause degradation of the quality of the water.

(d) Valves and Casing on Flowing Artesian Wells.—Valves and casing on all flowing artesian wells shall be maintained in a condition so that the flow of water can be completely stopped when the well is not being put to a beneficial use. Valves shall be closed when a beneficial use is not being made.

(e) Access Port.—Every water-supply well and such other wells, as may be specified by the Board, shall be equipped with a usable access port or air line and to be a minimum of 0.5 inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

(f) Mineralized Water.—Whenever a water-bearing stratum or aquifer that contains nonpotable mineralized water is encountered in well construction, the stratum shall be adequately cased or cemented off as conditions may require so that contamination of the overlying or underlying ground-water zones will not occur.

(g) Polluted Water.—In constructing any well, all water-bearing zones that are known to contain polluted water shall be adequately cased or cemented off so that pollution of the overlying and underlying ground-water zones will not occur.

(h) Well Test.—Every water-supply well shall be tested for capacity by a method and for a period of time acceptable to the Department and depending on the intended use of the well.

(i) Chlorination of the Well.—Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for domestic consumption shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service.

(j) Use of Well for Recharge or Disposal.—No well shall be used for recharge, injection or disposal purposes without prior permission from the Board of Water Resources after consultation with and recommendation by the State Board of Health.

(k) Abandonment of Wells.—

(1) Temporary Abandonment: When any well is temporarily removed from service, the top of the well shall be sealed with a water-tight cap or seal.

(2) Permanent Abandonment: Any well that is to be permanently abandoned shall be filled, plugged, or sealed in such a manner as to prevent the well from being a channel allowing the vertical movement of water and a source of contamination of the ground-water supply. (1967, c. 1157, s. 6.)

§ 87-89. **Existing installations.**—No well or pump installation in existence and in use on July 6, 1967, shall be required to conform to provisions of subsection (a) of § 87-88, or any rules or regulations adopted pursuant thereto not inconsistent with the provisions of this article; provided, however, that any well now or hereafter abandoned, including any well deemed to have been abandoned, as defined in the article, shall, within such time as may be specified by the Board, be brought into compliance with the requirements of this article and any applicable rules or regulations with respect to abandonment of wells. It is the intention of the General Assembly that if the provisions of this section are held invalid as a grant of an exclusive or separate emolument or privilege, within the meaning of article I, § 7 of the North Carolina Constitution, the remainder of this article shall be given effect without the invalid provision or provisions. (1967, c. 1157, s. 7.)

§ 87-90. **Rights of investigation, entry, access and inspection.**—The Board shall have the right to conduct such investigations as it may reasonably find necessary to carry on its duties prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition, installation, or operation of any well or associated equipment, facility, or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the installation or operation of any well: Provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under

his supervision. No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties, consistent with the provisions of this article. (1967, c. 1157, s. 8.)

§ **87-91. Notice.**—(a) Whenever the Board has reasonable grounds to believe that there has been a violation of this article, or any rule or regulation adopted pursuant thereto, the Board shall give written notice to the person or persons alleged to be in violation. Such notice shall identify the provision of this article, or regulation issued hereunder, alleged to be violated and the facts alleged to constitute such violation.

(b) Such notice shall be served on the person by sending the same to such person by registered or certified mail to his last known post-office address or by personal service by an agent or employee of the Board, and may be accompanied by an order of the Board requiring described remedial action, which if taken within the time specified in such order, will effect compliance with the requirements of this article and the rules and regulations issued hereunder. Such order shall become final unless a request for a hearing as hereinafter provided is made within 30 days from the date of service of such order. In addition to, or in lieu of such order, the Board may appoint a time and place for such person to be heard. Notice by the Board may be given to any person upon whom a summons may be served in accordance with the provisions of law governing civil actions in the superior courts of this State. The Board may prescribe the form and content of any particular notice. (1967, c. 1157, s. 9.)

§ **87-92. Hearings.**—The following provisions, together with any additional provisions not inconsistent herewith which the Board may prescribe, shall be applicable in connection with hearings pursuant to this article, except where other provisions are applicable in connection with specific types of hearings.

(1) Any hearing held pursuant to this article whether called at the instance of the Board or of any person, shall be held upon not less than 30 days' written notice given by the Board to any person who is a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings shall be before the Board, or before one or more of its own members, or before one or more of its own qualified employees, and the hearings shall be open to the public. Any employee or member of the Board to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board for decision.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Board or by any other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Board.

(4) The Board and its agents shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) The Board, or the duly authorized agents of the said Board, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.

(6) Subpoenas issued by the Board, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the

further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a subpoena issued by the Board, application may be made to the superior court of the appropriate county for enforcement thereof.

(7) The burden of proof at any hearing shall be upon the person or the Board as the case may be, at whose instance the hearing is being held.

(8) No decision or order of the Board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(9) Following any hearing, the Board shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Board proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Board's ruling with respect to each such requested finding of fact and conclusion of law.

(10) All orders and decisions of the Board shall set forth separately the Board's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Board is based.

(11) As previously recited above, the Board shall have the authority to adopt a seal which shall be the seal of said Board and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Board or its minutes may be certified by the director or assistant director of the department under his hand and the seal of the Board and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Board shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Board or by any other person or interested party where material, relevant and competent. (1967, c. 1157, s. 10.)

§ 87-93. **Judicial review.**—Any person against whom any final order or decision has been made except where no appeal is allowed as provided by § 143-215.2 (j) shall have a right of appeal to the Superior Court of Wake County or of the county where the order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the Board shall send a certified transcript of all testimony and exhibits introduced before the Board, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the Supreme Court. No bond shall be required of the Board to the Supreme Court.

(1) Upon appeal filed by any party, the Board shall forthwith furnish each party to the proceeding with a copy of the certified transcript and exhibits filed with the Board. A reasonable charge shall be paid the Board for said copies.

(2) Within 15 days after receipt of copy of certified transcript and exhibits,

any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript. (1967, c. 1157, s. 11.)

§ 87-94. Penalties.—Any person who violates any provisions of this article, or regulations issued hereunder, or order pursuant thereto, shall be subject to penalty of one hundred dollars ($100.00). In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation. (1967, c. 1157, s. 12.)

§ 87-95. Injunctive relief.—Upon violation of any of the provisions of this article, the Director of the Department may, either before or after the institution of proceedings for the collection of the penalty imposed by this article for such violations, institute a civil action in the superior court in the name of the State upon the relation of the Director of the Department for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this article for any violation of same. (1967, c. 1157, s. 13.)

§ 87-96. Conflict with other laws.—The provisions of any law, or regulation of the State or any municipality establishing standards affording greater protection to the public welfare, safety, health and ground-water resources shall prevail within the jurisdiction of such agency or municipality over the provisions of this article and regulations adopted hereunder.

This article or any rules or regulations adopted pursuant thereto, shall not be in conflict with any laws, rules, or regulations of the State Board of Health pertaining to public health, wells and ground-water supplies. All laws, rules, and regulations presently in effect that are administered by the State Board of Health shall remain in effect. (1967, c. 1157, s. 14.)

Chapter 89.

Engineering and Land Surveying.

§ 89-4. State Board of Registration created; powers; duties; qualifications and compensation; instructional programs.—To carry out the provisions of this chapter, the State Board of Registration for Professional Engineers and Land Surveyors is hereby created, whose duty it shall be to administer the provisions of this chapter. The Board shall consist of four registered engineers and two registered land surveyors, appointed by the Governor. Each member of the Board shall be a citizen of the United States, a resident of this State, and shall have been a practicing registered engineer, or a registered land surveyor, in North Carolina for at least ten years. Each member of the Board shall receive ten dollars ($10.00) per diem for attending the sessions of the Board or of its committees, and for time spent in necessary travel, and in addition shall be reimbursed for all necessary travel, and incidental and clerical expenses incurred, in carrying out the provisions of this chapter. Notwithstanding anything herein contained the present members of the Board shall continue in office as members of said Board until their present respective terms expire. The additional registered land surveyor member provided by this section shall be appointed January 1, 1966, for a three-year term. Thereafter as the terms of office of the Board members expire, their successors shall be appointed for terms of five years and shall serve until their successors are appointed and qualify. Each member shall continue in office after the expiration of his term until his successor shall be duly appointed and qualified. The Governor may remove any member of the Board for misconduct, incompetency, neglect of

duty or for any other sufficient cause. Vacancies in the membership of the Board, however created, shall be filled by appointment by the Governor for the unexpired term. Each member of the Board shall receive a certificate of appointment from the Governor, and before beginning his term of office he shall file with the Secretary of State the constitutional oath of office.

The Board shall have power to compel the attendance of witnesses, may administer oaths and may take testimony and proofs concerning all matters within its jurisdiction. The Board shall adopt and have an official seal, which shall be affixed to all certificates of registration granted; and shall make all bylaws and rules not inconsistent with law, needed in performing its duty.

The Board shall hold at least two regular meetings each year. Special meetings shall be held at such times as the bylaws of the Board may provide. Notice of all meetings shall be given in such manner as the bylaws provide. The Board shall elect annually from its members a chairman, a vice-chairman, and a secretary. The secretary shall receive compensation at a rate to be determined by the Board. A quorum of the Board shall consist of not less than four members.

The Board is authorized and empowered to use its funds to establish and conduct instructional programs for persons who are currently registered to practice engineering or land surveying, as well as for persons interested in obtaining adequate instruction or programs of study to qualify them for registration to practice engineering or land surveying. The Board may expend its funds for these purposes and is authorized and empowered not only to conduct, sponsor and arrange for instructional programs, but also to carry out such programs through extension courses or other media, and the Board may enter into plans or agreements with community colleges, institutions of higher learning, both public and private, State and county boards of education or with the governing authority of any industrial education center for the purpose of planning, scheduling or arranging such courses, instruction, extension courses or in assisting in obtaining courses of study or programs in the fields of engineering and land surveying. For the purpose of carrying out these objectives, the Board is authorized to make and promulgate such rules and regulations as may be necessary for such educational programs, instruction, extension services or for entering into plans or contracts with persons or educational and industrial institutions, but may not require attendance of surveyors at any such programs or make any penalty for failure to attend. (1921, c. 1, ss. 3-6; C. S., ss. 6055(d)-6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843; 1965, c. 940.)

Editor's Note.—

The 1965 amendment rewrote the first paragraph. It also deleted "may" before "provide" in the third sentence of the third paragraph, substituted "four members" for "three members" at the end of said paragraph, and eliminated at the end of the section a proviso that the last paragraph should not apply to Warren County.

§ 89-14. Land surveyors.

Local Modification. — Stanly 1967, c. 925, Wilkes: 1967, c. 924.

Chapter 90.

Medicine and Allied Occupations.

Article 1.

Practice of Medicine.

§ 90-12. **Limited license.**—The Board may, whenever in its opinion the conditions of the locality where the applicant resides are such as to render it advisable, make such modifications of the requirements of the preceding sections, both as to application for examination and examination for license, as in its judgment the interests of the people living in that locality may demand, and may issue to such applicant a special license, to be entitled a "Limited License," authorizing the holder thereof to practice medicine and surgery within the limits only of the districts specifically described therein. The holder of the limited license practicing medicine or surgery beyond the boundaries of the districts as laid down in said license shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars for each and every offense; and the Board is empowered to revoke such limited license, in its discretion, after due notice. (1909, c. 218, s. 1; C. S., s. 6616; 1967, c. 691, s. 42.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, struck out the former last sentence in the section.

§ 90-17: Repealed by Session Laws 1967, c. 691, s. 59, effective July 1, 1967.

§ 90-18. Practicing without license; practicing defined; penalties.

(10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.

(1967, c. 263, s. 1.)

Editor's Note.—

The 1967 amendment rewrote subdivision (10).

As the rest of the section was not changed by the amendment, only subdivision (10) is set out.

Applied in State v. Phillip, 261 N.C. 263, 134 S.E.2d 386 (1964).

§§ **90-19, 90-20**: Repealed by Session Laws 1967, c. 691, s. 59, effective July 1, 1967.

ARTICLE 1A.

Emergency Treatment of Minors.

§ 90-21.1. When physician may treat minor without consent of parent, guardian or person in loco parentis.—It shall be lawful for any physician licensed to practice medicine in North Carolina to render treatment to any minor without first obtaining the consent and approval of either the father or mother of said child, or any person acting as guardian, or any person standing in loco parentis to said child where:

(1) The parent or parents, the guardian, or a person standing in loco parentis to said child cannot be located or contacted with reasonable diligence during the time within which said minor needs to receive the treatment herein authorized, or

(2) Where the identity of the child is unknown, or where the necessity for immediate treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the life of said minor, or

(3) Where an effort to contact a parent, guardian, or person standing in loco parentis would result in a delay that would seriously worsen the physical condition of said minor. (1965, c. 810, s. 1.)

§ 90-21.2. "Treatment" defined.—The word "treatment" as used in § 90-21.1 is hereby defined to mean any medical procedure or treatment, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a physician licensed to practice medicine in the State of North Carolina that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where said physician administers treatment to said minor. (1965, c. 810, s. 2.)

§ 90-21.3. Performance of surgery on minor; obtaining second opinion as to necessity.—The word "treatment" as defined in § 90-21.2 shall also include any surgical procedure which in the opinion of the attending physician is necessary under the terms and conditions set out in § 90-21.1; provided, however, no surgery shall be conducted upon a minor as herein authorized unless the surgeon shall first obtain the opinion of another physician licensed to practice medicine in the State of North Carolina that said surgery is necessary under the conditions set forth in § 90-21.1; provided further, that in any emergency situation that shall arise in a rural community, or in a community where it is impossible for the surgeon to contact any other physician for the purpose of obtaining his opinion as to the necessity for immediate surgery, it shall not be necessary for the surgeon to obtain approval from another physician before performing such surgery as is necessary under the terms and conditions set forth in § 90-21.1. (1965, c. 810, s. 3.)

§ 90-21.4. Immunity of physician from damages for treatment of minor without consent.—Any physician administering treatment to a minor under the terms, conditions, and circumstances herein authorized shall not be liable in damages for administering treatment to a minor without first having obtained permission from the minor's father or mother or guardian or from a person standing in loco parentis to said minor. (1965, c. 810, s. 4.)

Article 2.

Dentistry.

§ 90-22. Practice of dentistry regulated in public interest; article liberally construed; Board of Dental Examiners; composition; qualifications and terms of members; vacancies; nominations and elections; compensation; expenditures by Board.

Board Serves Public Functions. — The Board of Dental Examiners, the Medical Care Commission and the Mental Health Council are creatures of the State of North Carolina. The functions they serve are concededly public functions of the State. Hawkins v. North Carolina Dental Soc'y, 355 F.2d 718 (4th Cir. 1966).

Exclusion of Negroes from State Dental Society.—See Hawkins v. North Carolina Dental Soc'y, 355 F.2d 718 (4th Cir. 1966).

§ 90-29. Necessity for license; dentistry defined; certain practices exempted.—No person shall engage in the practice of dentistry in this State or attempt to do so without first having applied for and obtained a license for such purpose from the said North Carolina State Board of Dental Examiners, or without first having obtained from said Board a certificate of renewal of license for the calendar year in which such person proposes to practice dentistry. The said Board may issue a "limited license" to employees of the division of Oral Hygiene of the North Carolina Board of Health who are graduates of a reputable dental institution. Limited licenses shall be valid for one year from date of issue, or until the announcement of the results of the next succeeding examination conducted by the said Board, whichever shall first occur. Limited licensees may perform only such dental operations as may be authorized by the said Board and those only in the course of their official duties. No limited license shall confer any right or privilege upon the recipient not stated in such license and no limited license may be renewed after the date of its expiration. A person shall be deemed to practice dentistry in this State within the meaning of this article and this section of this article, who represents himself as being able to remove stains and accretions from teeth, diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or maxillary bones and associated tissues or parts and/or who offers or undertakes by any means or methods to remove stains or accretions from teeth, diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the same, or to take impressions of the teeth or jaws or who uses a Roentgen or X-ray machine for dental treatment, Roentgenograms or for dental diagnostic purposes, (except that a registered dental hygienist shall be permitted to take Roentgenograms), or who owns, maintains or operates an office for the practice of dentistry, or who engages in any of the clinical practices included in the curricular of recognized and approved dental schools or colleges, or who is a manager, proprietor, operator or conductor of a place where dental operations are performed, or who performs dental operations of any kind gratuitously, or for a fee, gift, compensation or reward, paid or to be paid, either to himself or to another person or agency, or who furnishes, supplies, constructs, reproduces or repairs, or offers to furnish, supply, construct, reproduce or repair prosthetic dentures (sometimes known as "plates"), bridges or other substitutes for natural teeth, to the user or prospective user thereof.

The fact that a person uses any dental degree or designation or any card, device, directory, poster, sign or other media, whereby he represents himself to be a dentist practicing in the State, shall constitute prima facie evidence that such person is engaged in the practice of dentistry.

The following practices, acts, and operations, however, shall be exempt from the provisions of this article:

(1) Any act in the practice of his profession by a duly licensed physician or surgeon.

(2) The rendering of dental relief in emergency cases in the practice of his profession by a physician or surgeon licensed as such and registered under the laws of this State, unless he undertakes to reproduce or reproduces lost parts of the human teeth in the mouth, or to restore or replace in the human mouth, lost or missing teeth.

(3) The practice of dentistry in the discharge of their official duties by dentists in the United States army, the United States navy, the United States public health service, the United States veterans bureau, or other federal agency.

(4) The teaching of dentistry in dental schools or colleges conducted in this State and approved by the North Carolina State Board of Dental Examiners, by persons licensed to practice dentistry anywhere within the United States, and the practice of dentistry by students in dental schools or colleges so approved when such students are acting under the supervision of registered and licensed dentists acting as instructors or have satisfactorily completed the junior year requirements and, as part of their course of instruction, are assigned to perform dental work, without remuneration, upon the patients or inmates of an institution wholly owned and supported by the State of North Carolina, or a political subdivision thereof, under the supervision of a registered and licensed dentist acting as an instructor.

(5) The practice of dentistry by licensed dentists of another state, territory or country at meetings of organized dental societies, or component parts thereof, meetings of dental colleges or other like dental organizations while appearing as clinicians, or when appearing in emergency cases upon the specific call of dentist duly licensed under the provisions of this article.

(6) The practice of dentistry for not to exceed one year, as a bona fide intern under the supervision of the dental staff of a hospital approved by the North Carolina Board of Dental Examiners, by a person who is a graduate of a reputable dental institution.

(7) Any act or acts performed by an assistant to a licensed dentist when the said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board.

(8) Any act or acts performed by a licensed dental hygienist pursuant to the authority granted the same in article 16 of this chapter. (1935, c. 66, s. 6; 1953, c. 564, s. 3; 1957, c. 592, s. 2; 1961, c. 446, s. 2; 1965, c. 163, ss. 1, 2.)

Editor's Note.— The 1965 amendment inserted "clinical" in the last sentence of the first paragraph and added subdivisions (7) and (8) at the end of the section.

§ 90-39. Fees collectible by Board.—In order to provide the means of carrying out and enforcing the provisions of this article and the duties devolving upon the North Carolina State Board of Dental Examiners, it shall charge and collect for:

(1) Each applicant for examination, a fee of thirty dollars ($30.00);

(2) Each certificate of renewal of license, a fee of not to exceed twenty-five dollars ($25.00), which fee shall be annually fixed by the Board; and not later than November 30 of each year, the Board shall give notice of the amount of the renewal fee to each dentist licensed to practice in the State of North Carolina;

(3) Each certificate of practice to a resident dentist desiring to change to another state or territory, a fee of five dollars ($5.00);

(4) Each license issued to a legal practitioner of another state or territory to practice in this State, a fee of thirty dollars ($30.00);

(5) Each license to resume the practice issued to a dentist who has retired from the practice of dentistry, or has removed from and returned to the State, a fee of thirty dollars ($30.00). (1935, c. 66, s. 12; 1953, c. 564, s. 1; 1961, c. 446, s. 8; 1965, c. 163, s. 3.)

Editor's Note.— Prior to the 1965 amendment, subdivision (2) read "Each certificate of renewal of license, a fee of eight dollars ($8.00)."

§ 90-40. Unauthorized practice; penalty.—If any person shall practice or attempt to practice dentistry in this State without first having passed the examination and obtained a license from the North Carolina Board of Dental Examiners; or if he shall practice dentistry after March 31 of each year without applying for a certificate of renewal of license, as provided in § 90-31; or shall practice or attempt to practice dentistry while his license is revoked, or suspended, or when a certificate of renewal of license has been refused; or shall violate any of the provisions of this article for which no specific penalty has been provided; or shall practice or attempt to practice, dentistry in violation of the provisions of this article; or shall practice dentistry under any name other than his own name, said person shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or imprisonment, or both, in the discretion of the court. Each day's violation of this article shall constitute a separate offense. (1935, c. 66, s. 13; 1953, c. 564, s. 6; 1957, c. 592, s. 4; 1965, c. 163, s 6.)

Editor's Note.— The 1965 amendment substituted "March 31" for "June 30" near the beginning of the section.

§ 90-41. Revocation or suspension of license.—Whenever it shall appear to the North Carolina State Board of Dental Examiners that any dentist who has received license to practice dentistry in this State, or who has received from the said Board of Dental Examiners a certificate of renewal of license, has been guilty of fraud, deceit or misrepresentation in obtaining his license, or of gross immorality, or is an habitual user of intoxicants or drugs, rendering him unfit for the practice of dentistry, or has been guilty of malpractice, or is grossly ignorant or incompetent or has been guilty of willful neglect in the practice of dentistry, or has had a professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this article, or has permitted the use of his name by another for the illegal practice of dentistry by such person, or has been employing unlicensed persons to perform work which, under this article, can be legally done or performed only by persons holding a license to practice dentistry in this State, or of practicing deceit or other fraud upon the public or individual patients in obtaining or attempting to obtain practice, or has been guilty of fraudulent and/or misleading statements of his art, skill or knowledge, or of his method of treatment or practice, or has wrongfully or fraudulently held himself out to be or represented himself to be qualified as a specialist in any branch of dentistry or has been convicted of or entered a plea of guilty to a felony charge, or any offense involving moral turpitude, or has by himself or another, solicited or advertised in any manner for professional business, or has been guilty of any other unprofessional conduct in the practice of dentistry, or in the procurement of license has filed,

as his own, a diploma or license of another, or a forged diploma or a forged or false affidavit of identification or qualification, the Board may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed: Provided, however, it shall not be considered advertising within the meaning of this article for a dentist, duly authorized to practice in this State, to place a card containing his name, telephone number and office address and office hours in a registry or other publication, or to place upon the window or door of his office his name followed by the word, "dentist."

The North Carolina State Board of Dental Examiners is authorized and empowered to appoint an investigator to ascertain the facts with reference to any information coming to the attention of the said Board respecting the violation of any of the provisions of this article, or of any act heretofore in effect in this State. (1935, c. 66, s. 14; 1957, c. 592, s. 7; 1965, c. 163, s. 4; 1967, c. 451, s. 1.)

Editor's Note.—

The 1965 amendment inserted "or has wrongfully or fraudulently held himself out to be or represented himself to be qualified as a specialist in any branch of dentistry" near the middle of the first paragraph.

The 1967 amendment deleted the former third, fourth and fifth paragraphs, relating to investigation of violations of this article and notice, hearing and appeal for dentists accused of such violations.

The Board is not a court and is not expected to know and observe the technicalities that trained attorneys and judges would demonstrate. North Carolina State Bd. of Dental Examiners v. Grady, 268 N.C. 541, 151 S.E.2d 25 (1966).

And Specific Findings of Fact Are Not Required.—Specific findings of fact, with minute details as to particulars, time and place entered in written form, are not required by this section. North Carolina State Bd. of Dental Examiners v. Grady, 268 N.C. 541, 151 S.E.2d 25 (1966).

On appeal to the superior court from order of the Board of Dental Examiners suspending the license of a dentist, the superior court should hear the accused in like manner as a consent reference, and the court should weigh the evidence and make its own independent determinations of the matters in dispute. North Carolina State Bd. of Dental Examiners v. Grady, 268 N.C. 541, 151 S.E.2d 25 (1966).

§ 90-41.1. **Opportunity for licensee or applicant to have hearing.**—Every licensee or applicant for a license to practice dentistry, except applicants for license by comity and applicants for reinstatement after revocation, shall be afforded notice and an opportunity to be heard before the North Carolina State Board of Dental Examiners shall have authority to take any action, the effect of which would be:

(1) To deny permission to take an examination for licensing for which application has been duly made; or
(2) To deny a license after examination for any cause other than failure to pass an examination; or
(3) To withhold the renewal of a license for any cause other than failure to pay a statutory renewal fee; or
(4) To suspend a license; or
(5) To revoke a license,

such proceedings to be conducted in accordance with the provisions of chapter 150 of the General Statutes of North Carolina. (1967, c. 451, s. 2.)

§ 90-43. **Compensation and expenses of Board.**—Each member of the North Carolina State Board of Dental Examiners shall receive as compensation for his services in the performance of his duties under this article a sum not exceeding twenty dollars for each day actually engaged in the performance of the duties of his office, said per diem to be fixed by said Board, and all legitimate and necessary expenses incurred in attending meetings of the said Board.

The secretary-treasurer shall, as compensation for his services, both as secretary-treasurer of the Board and a member thereof, be allowed a reasonable an-

nual salary to be fixed by the Board and shall, in addition thereto, receive all legitimate and necessary expenses incurred by him in attending meetings of the Board and in the discharge of the duties of his office.

All per diem allowances and all expenses paid as herein provided shall be paid upon voucher drawn by the secretary-treasurer of the Board who shall likewise draw voucher payable to himself for the salary fixed for him by the Board.

The Board is authorized and empowered to expend from funds collected hereunder such additional sum or sums as it may determine necessary in the administration and enforcement of this article. (1935, c. 66, s. 15; 1965, c. 163, s. 5.)

Editor's Note. — The 1965 amendment substituted "twenty" for "ten" in the first paragraph.

§ **90-45:** Repealed by Session Laws 1967, c. 218, s. 4.

§ **90-48.1. Free choice by patient guaranteed.**—No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose a duly licensed dentist as the provider of care or services which are within the scope of practice of the profession of dentistry as defined in this chapter. (1965, c. 1169, s. 3.)

Editor's Note. — The act inserting this section, effective Jan. 1, 1966, designated it as "90-49." As § 90-49 formerly appeared in repealed article 3 of this chapter, this section has been redesignated § 90-48.1.

Section 4 of the act provides that the right to payment or reimbursement notwithstanding any provision to the contrary contained in any plan or policy shall be applicable only to those plans and policies entered into, issued, or renewed after the effective date of the act, there being no legislative intent to impair or enlarge obligations under any existing contracts.

Article 4.

Pharmacy.

Part 1. Practice of Pharmacy.

§ **90-58. Compensation of secretary and Board.**—The secretary of the Board of Pharmacy shall receive such salary as may be prescribed by the Board, and shall be paid his necessary expenses while engaged in the performance of his official duties. The other members of the said Board shall receive the sum of fifteen dollars for each day actually employed in the discharge of their official duty and their necessary expenses while engaged therein: Provided, that the compensation and expenses of the secretary and members of the said Board of Pharmacy and all disbursements for expenses incurred by the said Board in carrying into effect and executing the provisions of this article shall be paid out of the fees received by the said Board. (1905, c. 108, s. 10; Rev., s. 4476; C. S., s. 6655; 1921, c. 57, s. 2; 1965, c. 676, s. 2.)

Editor's Note.—The 1965 amendment substituted "fifteen dollars" for "ten dollars" near the beginning of the last sentence.

§ **90-60. Fees collectible by Board.**—The Board of Pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist, twenty-five dollars ($25.00); for renewing the license as a pharmacist, fifteen dollars ($15.00); for renewing the license of an assistant pharmacist, ten dollars ($10.00); for licenses without examination as provided in § 90-64, original, twenty-five dollars ($25.00), and renewal thereof, fifteen dollars ($15.00); for original registration of a drugstore, fifty dollars ($50.00), and renewal thereof, twenty-five dollars ($25.00); for issuing a per-

mit to a physician to conduct a drugstore in a village of not more than five hundred inhabitants, ten dollars ($10.00); for the renewal of permit to a physician to conduct a drugstore in a village of not more than five hundred inhabitants, five dollars ($5.00). All fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the Board. (1905, c. 108, s. 12; Rev., s. 4478; C. S., s. 6657; 1921, c. 57, s. 3; 1945, c. 572, s. 3; 1953, c. 183, s. 1; 1965, c. 676, s. 1.)

Editor's Note.—The 1965 amendment increased the fee for pharmacists from $10 to $25, the renewal fee for pharmacists from $10 to $15, the renewal fee for licenses without examination from $5 to $15, original registration of a drugstore from $25 to $50, and renewal thereof from $15 to $25, all in the first sentence.

§ 90-65. Denial, suspension, revocation or refusal to renew pharmacist's license or drugstore permit.—(a) The Board of Pharmacy may, after due notice and hearing, refuse to grant any license, or may suspend, revoke, or refuse to renew any license issued by it to any pharmacist or assistant pharmacist, or any permit to a physician to conduct a drugstore in a village of not more than 800 inhabitants upon any of the following grounds:

(1) Fraud or false representations made in connection with securing such license or any renewal thereof;

(2) Being guilty of any felony or any offense involving moral turpitude if the felony or offense affects his fitness to practice pharmacy;

(3) Habitual indulgence in the use of narcotic or other drugs or intoxicating liquors to such a degree as renders him unfit to practice pharmacy;

(4) Fraud or false representation made in connection with the practice of pharmacy which endangers or is likely to endanger the health or safety of the public;

(5) Gross immorality;

(6) Physical or mental disability, when shown by affidavit or sworn testimony of three physicians that such conditions exist and the Board determines that it is in the interest of the public health and safety that the license should not remain in force, or be renewed, as the case might be;

(7) Willful failure to comply with the laws governing the practice of pharmacy and the distribution of drugs;

(8) Willful failure to comply with the rules and regulations of the Board of Pharmacy where such failure is found to endanger or is likely to endanger the health and safety of the public.

(b) The Board of Pharmacy may, after due notice and hearing, refuse to grant any permit to any person or party for the operation of a drugstore or pharmacy, or may suspend, revoke or refuse to renew the permit of any holder for the operation of any drugstore or pharmacy upon the same grounds as stated in subsection (a).

(c) Any license or permit or renewal thereof obtained through fraud or by any fraudulent or false representations shall be void and of no effect in law. (1905, c. 108, ss. 17, 25; Rev., s. 4483; C. S., s. 6661; 1967, c. 807.)

Editor's Note.—The 1967 amendment rewrote the section, which formerly consisted of one paragraph.

ARTICLE 5.

Narcotic Drug Act.

§ 90-87. Definitions.

(1) "Cannabis" includes the following substances under whatever means they may be designated:

a. The dried flowering or fruiting tops of the pistillate plant cannabis sativa L. from which the resin has not been extracted;
b. The resin extracted from such tops; and
c. Every compound, manufacture, salt, derivative, mixture, or preparation of such resin or of such tops from which the resin has not been extracted; and
d. Marihuana.

(9) "Narcotic drugs" means coco [coca] leaves, opium, cannabis, peyote, mescaline, psilocybe mexicana, psilocybin, lysergic acid diethylamide, or other psychedelic drugs or hallucinogens, or any derivatives of any of these which possess hallucinagenic properties, and every other substance neither chemically nor physically distinguishable from them; and other drugs to which the federal narcotic laws may now apply; and any drug found by the State Board of Health, after reasonable notice and opportunity for hearing to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the effective date of determination of such finding by said State Board of Health.

(9a) "Nurse" means a person to whom the North Carolina Board of Nurse Registration and Nursing Education, or its successor, has issued a certificate as a registered nurse or a certificate as a licensed practical nurse.

(10) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Internal Revenue, or United States Secretary of the Treasury, or successor under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law.

(1965, c. 619, ss. 1, 2; 1967, c. 193, ss. 1, 2.)

Editor's Note.—

The 1965 amendment added subdivision (9a) and substituted "Commissioner of Internal Revenue, or United States Secretary of the Treasury, or successor" for "Commissioner of Narcotics" in subdivision (10).

The 1967 amendment deleted "Peyote or" at the beginning of paragraph (d) of subdivision (1) and rewrote subdivision (9) so as to make it applicable to psychedelic drugs or hallucinogens.

As the rest of the section was not changed by the amendments, only subdivisions (1), (9), (9a) and (10) are set out.

The word "coca" in brackets in subdivision (9) is suggested as a correction of "coco," which appears in the 1967 Session Laws.

Marijuana (marihuana) is a narcotic drug and so defined in subdivisions (1) and (9) of this section. State v. Chavis, 270 N.C. 306, 154 S.E.2d 340 (1967).

Applied in State v. Bullard, 267 N.C. 599, 148 S.E.2d 565 (1966).

§ 90-88. Manufacture, sale, etc., of narcotic drugs regulated.

Marijuana (marihuana) is a narcotic drug and so defined in subdivisions (1) and (9) of § 90-87. State v. Chavis, 270 N.C. 306, 154 S.E.2d 340 (1967).

Forbidding Possession of Drug Not Violation of Constitutional Rights.—It is not a violation of an accused's constitutional rights to forbid him, in the guise of his religion, to possess a drug which will produce hallucinatory symptoms similar to those produced in cases of schizophrenia, dementia praecox, or paranoia. State v. Bullard, 267 N.C. 599, 148 S.E.2d 565 (1966).

Circumstantial evidence tending to show that marijuana was found in a discarded hat identical to one that the defendant had been seen wearing was insufficient to support a conviction for unlawful possession of a narcotic drug in violation of this section. State v. Chavis, 270 N.C. 306, 154 S.E.2d 340 (1967).

§ 90-92. Dispensing of drugs regulated.—A person in charge of a hospital or of a laboratory, or in the employ of this State or of any other state, or of any political subdivisions thereof, and the master or other proper officer of a ship or aircraft, who obtains narcotic drugs under the provisions of this article or otherwise shall not administer, nor dispense, nor otherwise use such drugs within

this State except within the scope of his employment or official duty and then only for scientific or medicinal purposes and subject to the provisions of this article. (1935, c. 477, s. 6.)

Editor's Note.—This section is set out in the Supplement to correct an error appearing in the replacement volume.

§ 90-98. Records of drugs dispensed; records of manufacturers and wholesalers; records of pharmacists; written orders unnecessary for certain drugs; invoices rendered with sales. — Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed as a sufficient compliance with this section if any such person using small quantities or solutions or other preparations of such drugs for local application shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of this section.

Pharmacists and pharmacy owners shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of this article.

The keeping of a record required by or under the federal narcotic law shall constitute the only record required to be kept by every person who purchases for resale or who sells narcotic drug preparations exempted.

Written orders shall not be required for the sale of cannabis indica, cannabis sativa, peyote, marihuana, mescaline, psilocybe mexicana, psilocybin, and lysergic acid diethylamide, and the provisions of the article in respect to written orders and records shall not apply to cannabis indica, cannabis sativa, peyote, marihuana, mescaline, psilocybe mexicana, psilocybin, and lysergic acid diethylamide, but manufacturers and wholesalers of cannabis indica, cannabis sativa, peyote, marihuana, mescaline, psilocybe mexicana, psilocybin, and lysergic acid diethylamide, shall be required to render with every sale of cannabis indica, cannabis sativa, peyote, marihuana, mescaline, psilocybe mexicana, psilocybin, and lysergic acid diethylamide, an invoice, whether such sale be for cash or on credit; and such invoice shall contain the date of such sale, the name and address of the purchaser, and the amount of cannabis indica, cannabis sativa, peyote, marihuana, mescaline, psilocybe mexicana, psilocybin, and lysergic acid diethylamide so sold.

Every purchaser of cannabis indica, cannabis sativa, peyote, marihuana, mescaline, psilocybe mexicana, psilocybin, and lysergic acid diethylamide from a wholesaler or manufacturer shall be required to keep the invoice rendered with such purchase for a period of two years. (1935, c. 477, s. 10; 1967, c. 193, s. 3.)

Editor's Note. — The 1967 amendment rewrote the fifth and sixth paragraphs.

§ 90-108. Possession of hypodermic syringes and needles regulated. —No person except a manufacturer or a wholesaler or a retail dealer in surgical instruments, pharmacist, physician, dentist, veterinarian, nurse or interne shall at any time have or possess a hypodermic syringe or needle or any instrument or implement adapted for the use of habit-forming drugs by subcutaneous injections and which is possessed for the purpose of administering habit-forming drugs, unless such possession be authorized by the certificate of a physician issued within the period of one year prior hereto; provided, however, a nurse, as

referred to above, shall mean one who is specifically authorized by a physician or dentist to give subcutaneous injections under the supervision or direction of such physician or dentist. (1935, c. 477, s. 19; 1965, c. 619, s. 3.)

Editor's Note.—The 1965 amendment added the proviso at the end of the section.

§ 90-109. Burden on defendant to prove exemption.

Example of Specific Language Shifting Burden of Proof. — This section provides an example of specific language used by the legislature when it intended to shift the burden of proof to a defendant. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

§ 90-111.2. Seizure and forfeiture of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport narcotics.

(b) Any vehicle, vessel or aircraft which has been or is being used in violation of subsection (a), except a vehicle, vessel or aircraft used by any person as a common carrier in the transaction of business as such common carrier, shall be seized by any peace officer, and forfeited as in the case of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport intoxicating beverages, or after forfeiture, in the discretion of the presiding judge and upon application of the State Bureau of Investigation said vehicle, vessel or aircraft may be transferred to the said State Bureau of Investigation for use in official investigations. (1953, c. 909, s. 5; 1965, c. 619, s. 4; 1967, c. 193, s. 4.)

Editor's Note.—The 1965 amendment added at the end of subsection (b) the language which begins with the words "or after forfeiture."

The 1967 amendment deleted "of violations of this article" at the end of subsection (b).

As subsection (a) was not changed by the amendments, it is not set out.

Article 5A.

Barbiturate and Stimulant Drugs.

§ 90-113.2. Prohibited acts.

(5) For any person to possess for the purpose of sale, barter, exchange, dispensing, supplying, giving away, or furnishing any barbiturate or stimulant drugs; and, provided, the possession of one hundred or more tablets, capsules or other dosage forms containing either barbiturate or stimulant drugs, or a combination of both, shall be prima facie evidence that such possession is for the purpose of sale, barter, exchange, dispensing, supplying, giving away, or furnishing.

(6) For any person to possess a hypodermic syringe or needle, or any instrument or implement adapted for the use of barbiturate or stimulant drugs by subcutaneous, intramuscular, or intravenous injections and which is possessed for the purpose of administering barbiturate or stimulant drugs, unless such possession be authorized by the certificate of a physician issued within the period of one year prior thereto. (1955, c. 1330, s. 2; 1959, c. 1215, s. 1; 1965, c. 620, s. 1.)

Editor's Note.—The 1965 amendment added subdivisions (5) and (6).

As only subdivisions (5) and (6) were affected by the amendment, the rest of the section is not set out.

Applied in State v. Phillip, 261 N.C. 263, 134 S.E.2d 386 (1964).

§ 90-113.3. Exemptions.

(a) The provisions of subdivisions (1), (3), (5) and (6) of § 90-113.2 shall not be applicable:

(1) To the delivery of barbiturate or stimulant drugs for medical or scientific purposes only to persons included in any of the classes named in

subdivision (3) below, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or

(2) To the possession of barbiturate or stimulant drugs by such persons named in subdivision (3) below or their agents or employees for such use.

(3) The classes of persons to whom the above-mentioned delivery or possession provisions shall not apply are:

a. Pharmacists;

b. Practitioners;

c. Persons who procure barbiturate or stimulant drugs:

1. For disposition by or under the supervision of pharmacists or practitioners employed by them, or

2. For the purpose of lawful research, teaching or testing and not for resale;

d. Hospitals and other institutions which procure barbiturate or stimulant drugs for lawful administration by or under the supervision of practitioners;

e. Manufacturers and wholesalers; and

f. Carriers and warehousemen.

(1965, c. 620, s. 2.)

Editor's Note.—The 1965 amendment substituted "subdivisions (1), (3), (5) and (6)" for "subdivisions (1) and (3)" near the beginning of subsection (a). As subsection (b) was not changed by the amendment, it is not set out.

§ 90-113.4. Complaints, etc., need not negative exceptions, excuses or exemptions; burden of proof.

Example of Specific Language Shifting Burden of Proof. — This section provides an example of specific language used by the legislature when it intended to shift the burden of proof to a defendant. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

§ 90-113.5. Retention of invoices, prescriptions and records by persons within exemptions; inspection.—Persons, other than carriers, to whom the exemptions to this article are applicable shall retain all invoices, prescriptions, orders, and records relating to barbiturate or stimulant drugs manufactured, purchased, sold or handled for not less than two calendar years after the date of the transaction shown by such invoice. No separate records, nor set form or forms for any of the foregoing records, shall be required as long as records containing the required information are available. All records, including prescriptions, orders, and invoices and stocks of barbiturate and stimulant drugs, shall be open for inspection, at reasonable times, only to federal and State officers whose duty it is to enforce the laws of the State or of the United States relating to barbiturate or stimulant drugs. No officer having knowledge by virtue of his office of any such prescription, order, invoice, or record shall divulge such knowledge except in connection with a prosecution or proceeding in court, or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, invoices or records relate is a party. (1955, c. 1330, s. 4½; 1959, c. 1215, s. 1; 1965, c. 620, s. 3.)

Editor's Note.—The 1965 amendment added "prescriptions, orders, and records" in the first sentence and added all of the section which follows that sentence.

§ 90-113.7. Seizure and forfeiture of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport barbiturate or stimulant drugs.—(a) Except under circumstances authorized in this article, it shall be unlawful;

(1) To transport, carry, or convey any barbiturate or stimulant drug in, upon, or by means of any vehicle, vessel or aircraft; or

(2) To conceal or possess any barbiturate or stimulant drug in or upon any vehicle, vessel or aircraft, or upon the person of anyone in or upon any vehicle, vessel or aircraft; or

(3) To use any vehicle, vessel or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any barbiturate or stimulant drug.

(b) Any vehicle, vessel or aircraft which has been, or is being used in violation of subsection (a), except a vehicle, vessel or aircraft having an empty gross weight of more than 7,000 pounds and operated by a person other than the registered owner, shall be seized by any peace officer, and forfeited as in the case of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport intoxicating beverages, or after forfeiture, in the discretion of the presiding judge and upon application of the State Bureau of Investigation said vehicle, vessel or aircraft may be transferred to the said State Bureau of Investigation for use in official investigations. (1965, c. 620, s. 5; 1967, c. 194.)

Editor's Note.—Section 4 of c. 620, Session Laws 1965, rewrote former § 90-113.7 and redesignated it as § 90-113.8.

The 1967 amendment deleted "of violations of this article" at the end of subsection (b).

§ 90-113.8. Penalties.—(a) Any person who violates, or who conspires with, aids, abets, or procures another to violate, G.S. 90-113.2 (5) relating to the illegal possession for the purpose of sale, barter, exchange, dispensing, supplying, giving away, or furnishing of barbiturate or stimulant drugs, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not less than six months, nor more than five years. Upon a second or subsequent conviction for a violation of G.S. 90-113.2 (5) the punishment shall be imprisonment for not less than one nor more than ten years.

(b) Any person who violates, or conspires with, aids, abets, or procures another to violate, any provision of this article, other than G.S. 90-113.2 (5), shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000.00), or by imprisonment for not more than two years, or both, in the discretion of the court. Upon a second or subsequent conviction for a violation of any provision of this article, other than G.S. 90-113.2 (5), the defendant shall be guilty of a felony and shall be fined or imprisoned, or both, in the discretion of the court.

(c) For the purpose of ascertaining whether a conviction is a second or subsequent conviction within the meaning of this section, a conviction for the violation of any law of the United States, or any other state, which violation would have been punishable under this article if the offending act had been committed in this State, shall be deemed to be a prior conviction. (1955, c. 1330, s. 6; 1959, c. 1215, s. 1; 1965, c. 620, s. 4.)

Editor's Note.—Prior to the 1965 amendment this section was designated as § 90-113.7. The 1965 amendment rewrote the section, which formerly consisted of only one paragraph.

Article 6.

Optometry.

§ 90-115. Practice without registration unlawful.—After the passage of this article it shall be unlawful for any person to practice optometry in the State unless he has first obtained a certificate of registration as hereinafter provided. Within the meaning of this article, a person shall be deemed as practicing optometry who does, or attempts to, sell, furnish, replace, or duplicate, a lens, frame, or mounting, or furnishes any kind of material or apparatus for ophthalmic use,

without a written prescription from a person authorized under the laws of the State of North Carolina to practice optometry, or from a person authorized under the laws of North Carolina to practice medicine: Provided, however, that the provisions of this section shall not prohibit persons or corporations from selling completely assembled spectacles, without advice or aid as to the selection thereof, as merchandise from permanently located or established places of business, nor shall it prohibit persons or corporations from making mechanical repairs to frames for spectacles; nor shall it prohibit any person, firm, or corporation engaged in grinding lenses and filling prescriptions from replacing or duplicating lenses on original prescriptions issued by a duly licensed optometrist, and oculist. (1909, c. 444, s. 2; C. S., s. 6688; 1935, c. 63; 1967, c. 691, s. 43.)

Editor's Note.— The 1967 amendment, effective July 1, 1967, deleted "and filed the same, or a certified copy thereof, with the clerk of the superior court of his residence" following "certificate of registration" in the first sentence.

§ **90-120. Certified copy.**—Upon the request of any person entitled to a certificate of registration the Board shall issue a certified copy thereof, and the Board shall be entitled to a fee of one dollar ($1.00) for the issuance of a certified copy. (1909, c. 444, s. 8; C. S., s. 6693; 1967, c. 691, s. 44.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, rewrote the section. The present provisions were formerly found in the last sentence of the section.

§ **90-124. Rules and regulations; discipline, suspension, revocation and regrant of certificate.**

Cited in Head v. New Mexico Bd. of Examiners in Optometry, 374 U.S. 424, 83 Sup. Ct. 1759, 10 L. Ed. 2d 983 (1963).

§ **90-127.1. Free choice by patient guaranteed.** — No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose the provider of care or service which are within the scope of practice of a duly licensed optometrist or duly licensed physician as defined in this chapter. (1965, c. 396, s. 3.)

Editor's Note.—Section 6 of the act inserting this section makes it effective July 1, 1965. Section 4 of the act provides that it shall not be construed to equate optometrists with physicians except to the extent that each must be duly licensed.

ARTICLE 7.

Osteopathy.

§ **90-135:** Repealed by Session Laws 1967, c. 691, s. 59, effective July 1, 1967.

ARTICLE 8.

Chiropractic.

§ **90-142. Rules and regulations.** — The State Board of Chiropractic Examiners may adopt suitable rules and regulations for the performance of their duties and the enforcement of the provisions of this article. (1919, c. 148, s. 4; C. S., s. 6714; 1967, c. 263, s. 2.)

Editor's Note. — The 1967 amendment added "and the enforcement of the provisions of this article."

§ **90-143. Definitions of chiropractic; examinations; educational requirements.**—Chiropractic is herein defined to be the science of adjusting the

cause of disease by realigning the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body. It shall be the duty of the Board of Examiners to examine all applicants who shall furnish satisfactory proof of good character and of graduation from a regular chiropractic school of good standing, and such examination shall embrace such branches of study as are usually included in the regular course of study for chiropractors in chiropractic schools or colleges of good standing, including especially an examination of each applicant in the science of chiropractic as herein defined. Every applicant for license shall furnish to said Board of Examiners sufficient and satisfactory evidence that, prior to the beginning of his course in chiropractic, he had obtained a high school education, or what is equivalent thereto, entitling him to admission in a reputable college or university; he shall satisfy Board of Examiners that he has completed two years of college work and received credits for a minimum of forty-eight semester hours or the equivalent thereof, provided persons now enrolled in, or who have already completed a course at, a reputable chiropractic college shall be exempt from this requirement; and he shall also exhibit to said Board of Chiropractic Examiners, or satisfy them that he holds, a diploma from a reputable chiropractic college, and not a correspondence school, and that said diploma was granted to him on a personal attendance and completion of a regular four years' course in such chiropractic college, and such applicant shall be examined in the following studies: Chiropractic analysis, chiropractic philosophy, chiropractic neurology, palpation, nerve tracing, microscopy, histology, anatomy, gynecology, jurisprudence, chemistry, pathology, hygiene, physiology, embryology, eye, ear, nose, and throat, dermatology, symptomology, spinography, chiropractic orghopody, and the theory, teaching and practicing of chiropractic.

Provided further, that the said State Board of Chiropractic Examiners may license by reciprocity, upon application, any chiropractor holding a license issued to him by a regular board of chiropractic examiners in another state when said Board is satisfied that such applicant has educational qualifications, or the equivalent thereof, equal to those prescribed by said Board for admission to practice chiropractic in this State, and upon proof of good moral character and that he has practiced chiropractic under such license for at least one year. (1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5; C. S., s. 6715; 1933, c. 442, s. 1; 1937, c. 293, s. 1; 1963, c. 646, s. 2; 1967, c. 263, s. 3.)

Editor's Note.— The 1967 amendment deleted "twenty-four moveable vertebrae of the" preceding the word "spine" where it first appears in this section.

§ **90-150**: Repealed by Session Laws 1967, c. 218, s. 4.

§ **90-152**: Repealed by Session Laws 1967, c. 691, s. 59, effective July 1, 1967.

Article 9.

Nurse Practice Act.

§ **90-158. Definitions.**—As used in this article:

(1) "Registered nurse" means a person to whom the Board has issued a certificate as "registered nurse."

(2) "Licensed practical nurse" means a person to whom the Board has issued a certificate as "licensed practical nurse."

(3) "Nursing" is a unique service provided for persons who are ill, injured, or experiencing alterations in normal health processes; it is the ministering to, the assisting of, and the sustained, vigilant, and continuous care of those acutely or chronically ill; the supervision of patients during convalescence, restoration, and rehabilitation; and the promotion of health maintenance.

a. Nursing by Registered Nurse.—The practice of nursing by registered nurse means the performance for compensation of any act in the observation, care, and counsel of persons who are ill, injured, or experiencing alterations in normal health processes; and/or in the supervision and teaching of others who are or will be involved in nursing care; and/or the administration of medications and treatments as prescribed by a licensed physician or dentist. Nursing by registered nurse requires specialized knowledge, judgment, and skill, but does not require nor permit medical diagnosis or medical prescription of therapeutic or corrective measures. The use of skill and judgment is based upon an understanding of principles from the biological, social, and physical sciences. Nursing by registered nurse requires use of skills in modifying methods of nursing care and supervision as the patient's needs change.

b. Nursing by Licensed Practical Nurse.—The practice of practical nursing means the performance for compensation of selected acts in the care of persons who are ill, injured, or experiencing alterations in normal health processes. Such performance requires a knowledge of and skill in simple nursing procedures, gained through prescribed preparation, but does not require the specialized knowledge, judgment, and skill essential for nursing by registered nurse. Practical nursing is performed under orders of a licensed physician or a licensed dentist, and/or under directions issued by a registered nurse.

(4) "Board" means the North Carolina Board of Nursing.

(5) "Certificate as registered nurse" means the initial certificate issued by the Board following proof of qualifications.

(6) "Certificate as licensed practical nurse" means the initial certificate issued by the Board following proof of qualifications.

(7) "License" means a license to practice nursing as a registered nurse or to practice practical nursing as a licensed practical nurse, including a renewal thereof.

(8) "Licensee" means a holder of a current license to practice as a registered nurse or as a licensed practical nurse.

(9) "Educational unit in nursing" or "unit" means a program, department or school of nursing or a program of practical nurse education, any one or all of these. (1965, c. 578, s. 1.)

Editor's Note.—Session Laws 1965, c. 578, effective July 1, 1965, consolidated and rewrote former articles 9, "Registered Nurses," and 9A, "Practical Nurses," to constitute present article 9, "Nurse Practice Act." Former article 9 originally contained former §§ 90-158 to 90-171. These sections were repealed by Session Laws 1953, c. 1199, which substituted therefor former §§ 90-158.1 to 90-158.40. Session Laws 1953, c. 1208, added former § 90-158.41. Former § 90-158.14 was amended by Session Laws 1961, c. 431. Former article 9A, containing former §§ 90-171.1 to 90-171.15, was derived from Session Laws 1947, c. 1091, as amended by Session Laws 1953, cc. 750, 1041, 1199; 1955, c. 1266; 1961, c. 431.

In the 1965 act, the sections of this article were numbered 90-158.101 to 90-158.130. For the sake of uniformity in the numbering system of the General Statutes they have been renumbered 90-158 through 90-171.16.

§ 90-159. Board of Nursing established; composition; officers; employees.—(a) North Carolina Board of Nursing.—There is hereby established the North Carolina Board of Nursing (hereinafter referred to as "the Board"), which shall consist of twelve members to be chosen as hereinafter provided.

Five members of the Board shall be registered nurses who are licensed to practice in North Carolina, all five of whom shall be appointed by the Governor.

Two members of the Board shall be physicians, both of whom shall be appointed by the Governor.

Two members of the Board shall be administrators of hospitals operating, or associated with, educational units in nursing, and both of whom shall be appointed by the Governor.

Three members of the Board shall be licensed practical nurses who are licensed to practice in North Carolina, all three of whom shall be appointed by the Governor.

The licensed practical nurse members of the Board shall participate only in such actions and functions of the Board as shall affect the education, examination, licensure, and the practice of practical nurses.

The present members of the Board shall continue in office until the expiration of their terms; and, thereafter, all regular appointments shall be for a term of four years.

An interim vacancy on the Board shall be filled for the remainder of the unexpired term by appointment of the Governor.

The term of office of each member of the Board shall continue until his or her successor is appointed and qualified.

(b) Officers.—The officers of the Board shall be a chairman, a vice-chairman, and such other officers as the Board may deem necessary. All officers shall be elected annually by the Board for terms of one year each and until their successors shall have been elected and qualified.

(c) Executive Director.—The Board shall employ an executive director, who shall not be a member of the Board, but who shall be a registered nurse, duly registered in North Carolina. The executive director shall perform such duties and functions as may be prescribed by the Board and shall be responsible to the Board for the performance of those duties and functions. The Board shall fix the compensation of the executive director. The executive director shall serve as treasurer of the Board and shall furnish surety bond approved by the Board in such sum as it may prescribe, conditioned upon the true and faithful accounting for all funds of the Board which may come into the hands, custody, or control of the executive director, which bond shall be made payable to the Board. The Board shall require a surety bond to be furnished by the executive director for each year of employment. The premium on said bond shall be regarded as a proper and necessary expense of the Board. The surety bond executed and furnished for the faithful accounting of the executive director if continued or renewed from year to year by endorsement or otherwise, shall be deemed to be a bond covering the faithful accounting of the executive director to the extent of the principal amount of the bond for each and every year during which the bond shall be renewed or continued in force, and the provisions of this subsection shall be a part of the contract, terms, and conditions of any such bond.

The Board may employ legal counsel, accountants, and such employees, assistants, and agents as may be necessary in the opinion of the Board to carry into effect this article and may fix the compensation of such persons employed, and may incur other necessary expenses to effectuate this article. (1947, c. 1091, s. 1; 1953, c. 1199, ss. 1-3; 1955, c. 1266, s. 1; 1965, c. 578, s. 1.)

Editor's Note.—Session Laws 1965, c. 578, s. 2, transfers the records, property, etc., executory contracts and personnel of the former Board of Nurse Registration and Nursing Education to the Board of Nursing and provides that all statutory references to the "Board of Nurse Registration and Nursing Education" or the "Board of Nurse Registration and Nursing Education Enlarged" are amended to refer to the "Board of Nursing." Section 3 of the 1965 act provides for the effect of the transfer of functions on pending suits, transactions, etc.

§ 90-160. Compensation of members of Board.—The members of the Board shall receive such per diem compensation and reimbursement for actual traveling and subsistence expenses as shall be fixed by the Board. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-161. **Expenses payable from fees collected by Board; schedule of fees.**—(a) All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this article, or funds received from other sources. In no case shall any salary, expense, or other obligation of the Board be charged against the Treasury of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this article.

(b) The schedule of fees shall not exceed the following rates:

Application for examination leading to certificate and license as registered nurse	$20.00
Application for certificate and license as registered nurse by endorsement	20.00
Application for each re-examination leading to certificate and license as registered nurse	20.00
Renewal of license to practice as a registered nurse (2-year period)	5.00
Reinstatement of lapsed license to practice as a registered nurse (reinstatement fee of $5.00 plus current renewal fee of $5.00)	10.00
Application for examination leading to certificate and license as licensed practical nurse by examination	20.00
Application for certificate and license as licensed practical nurse by endorsement	20.00
Application for each re-examination leading to certificate and license as licensed practical nurse	20.00
Renewal of license to practice as a licensed practical nurse (2-year period)	5.00
Reinstatement of lapsed license to practice as a licensed practical nurse (reinstatement fee $5.00 plus current renewal fee $5.00)	10.00
Reasonable charges for duplication services and materials.	

(c) No refund of fees will be made. (1947, c. 1091, s. 1; 1953, c. 750; c. 1199, ss. 1, 4; 1955, c. 1266, ss. 2, 3; 1961, c. 431, s. 2; 1965, c. 578, s. 1.)

§ 90-162. **Official seal of Board; rules and regulations.**—The Board shall adopt an official seal, which shall be affixed to all certificates and licenses issued by it. The Board shall make such rules and regulations not inconsistent with law, as may be necessary to regulate its proceedings and otherwise to carry out the purposes of and enforce this article. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-163. **Meetings; quorum; power to compel attendance of witnesses and to take testimony.**—The Board shall hold at least one meeting each year for the purpose of considering and acting upon the accreditation of educational units in nursing, and for the transaction of its other business and affairs. The Board shall adopt rules with respect to calling, holding, and conducting regular and special meetings. A majority of the members of the Board shall constitute a quorum. The Board may compel the attendance of witnesses and production of documents, and take testimony and proof concerning any matter within its jurisdiction, and for such purposes each member of the Board may administer oaths according to law. Subpoenas shall be issued by the executive director and directed to any sheriff, constable or other officer authorized to serve process, who shall execute the same and make due return to the Board. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-164. **Custody and use of funds.**—All fees payable to the Board shall be deposited by the executive director of the Board in financial institutions designated by the Board as official depositories for funds of the Board, which funds shall be deposited in the name of the Board and shall be used for the payment of

all expenses of the Board in carrying out this article and for promoting and extending nursing education in North Carolina, pursuant to Board authorization. An annual audit of the accounts of the Board shall be made by the State Auditor. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-165. Board may accept contributions, etc.—The Board may accept grants, contributions, devises, bequests, and gifts which shall be kept in a separate fund and shall be used by it in promoting and encouraging nurse recruitment and nurse education in this State, including the making of loans or gifts for the education of worthy student nurses. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-166. Nurses registered under previous law.—Every person who on June 30, 1965, holds a certificate or license to practice nursing as a registered nurse or licensed practical nurse, issued by competent authority pursuant to the provisions of any statute heretofore providing for the certification and licensing of nurses in North Carolina, shall be deemed to be licensed as a registered nurse or licensed practical nurse under the provisions of this article, but such person previously licensed shall comply with this article with respect to the renewal of licenses. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-167. Practice as registered nurse and licensed practical nurse regulated.—In order to safeguard life and health, any person practicing or offering to practice nursing as defined herein shall be required to submit evidence that he or she is qualified so to practice by virtue of a license with current renewal, issued by the North Carolina Board of Nursing. After December 31, 1965, any person not licensed under this article who

(1) Practices or offers to practice nursing; or
(2) Uses any card, title, or abbreviation to indicate that such person is a registered nurse or licensed practical nurse,

shall be guilty of a misdemeanor.

Nothing in this article shall be construed in any way to prohibit or limit the performance by any person of such duties as specified mechanical acts in the physical care of a patient when such care and activities do not require the knowledge and skill required of a registered nurse or licensed practical nurse, or when such care and activities are performed under orders or directions of a licensed physician, licensed dentist or registered nurse. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-168. Licensure by examination.—At least once each year and at such other times as the Board may determine, the Board shall cause an examination to be given, at such time and place as may be fixed by the Board, to applicants for a certificate and license to practice as a registered nurse or licensed practical nurse. The Board shall give due publicity in advance as to each examination, including notice to all accredited educational units in nursing in the State, in order that qualified persons may become applicants. The Board shall also notify each applicant of the time and place of each examination. The Board may adopt regulations, not inconsistent with this article, governing the furnishing of proof of qualifications of applicants, the conduct of applicants during the examination, and the conduct of the examination.

The applicant shall be required to pass a written examination approved and given by the Board. When an applicant shall have passed such examination, as determined by the Board, whose decision shall be final, the Board shall issue to the applicant a certificate and a license to practice nursing as a registered nurse or licensed practical nurse. The form of the certificate shall be determined by the Board. (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-169. Scope of examination.—An applicant, qualified and admitted to the licensing examination, shall be examined on such knowledge of nursing and

related material basic to nursing as the Board may determine. In preparing and giving examinations, the Board may use its own method of examination or a centralized examination service. (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-170. **Qualifications of applicant for examination.**—In order to be eligible for the examination, the applicant shall make written application to the Board on forms furnished by the Board and shall submit to the Board an application fee and written evidence, verified by oath, sufficient to satisfy the Board that the applicant meets the following qualifications and conditions:

(1) For examination leading to certificate and license as registered nurse the applicant shall:
   a. Be of good moral character;
   b. Be a graduate of a high school accredited by the State agency charged by law with accrediting high schools, or shall have a high school education equivalent thereto as determined by the board;
   c. Have completed the course of study and shall have graduated from an educational unit in nursing accredited by the Board in accordance with this article, or one accredited by the legal accrediting agency of another state or territory, the District of Columbia, or a foreign country, and satisfactory to the Board.

(2) For examination leading to certificate and license as licensed practical nurse, the applicant shall:
   a. Be of good moral character;
   b. Have completed at least the ninth grade of high school or the equivalent as determined by the board; and
   c. Have completed the course of study and graduated from a program of practical nurse education accredited by the Board in accordance with this article, or one accredited by the legal accrediting agency of another state or territory, the District of Columbia, or a foreign country, and satisfactory to the Board. (1947, c. 1091, s. 1; 1953, c. 750; c. 1199, ss. 1, 4; 1955, c. 1266, s. 2; 1961, c. 431, s. 2; 1965, c. 578, s. 1.)

§ 90-171. **Qualifications for certificate and license without examination.**—The Board may, without examination, issue a certificate and a license to practice as a registered nurse or licensed practical nurse to an applicant who has been duly licensed as a registered nurse or licensed practical nurse under the laws of another state, territory, District of Columbia or foreign country, if in the opinion of the Board the applicant is competent to practice as a registered nurse or licensed practical nurse in this State. The Board may require such applicant to prove her competency and qualifications to practice as a registered nurse or licensed practical nurse in North Carolina. The decision of the Board thereon shall be final. (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1961, c. 431, s. 2; 1965, c. 578, s. 1.)

§ 90-171.1. **Re-examination.**—Any applicant who fails to pass the first licensure examination may take subsequent examinations. Before admission to such subsequent examination, the Board may require the applicant to complete additional courses of study designated by the Board. (1965, c. 578, s. 1.)

§ 90-171.2. **Renewal of license.**—The license of every person licensed under this article shall [be] biennially renewed, except as hereinafter provided. On or before the December 31 expiration date of the current license, every registered nurse or licensed practical nurse who desires to continue the practice of nursing shall file application for renewal of license on forms furnished by the Board and

shall file the required fee with completed application. At least sixty days prior to the December 31 expiration date, the Board shall cause to be mailed an application for renewal of license for the biennium to every person who has received from the Board a license to practice nursing as a registered nurse or a licensed practical nurse and who has a right to renewal of license under this article. The application form for renewal of license shall be mailed to the last known address of such registered nurse or licensed practical nurse as it appears on the records of the Board. It shall be the duty of every registered nurse and licensed practical nurse in North Carolina to keep the Board informed of the current mailing address of such nurse, and the failure of the Board to send or the failure of any nurse to receive an application form for renewal of license shall not excuse said nurse from the requirements for renewal of license herein contained. Upon return of application form and fee and verification of the accuracy thereof, the Board shall issue to each entitled applicant a renewal of license to practice nursing for the period beginning January 1 and ending December 31 two years later. Such license shall render the holder thereof a legal practitioner for the period stated. Failure to renew the license as required by this section shall result in the automatic forfeiture of the right to practice nursing in North Carolina.

Newly registered nurses and licensed practical nurses shall be issued a license without additional fee for the remainder of the calendar year of issuance of the original certificate.

For the biennium, 1966-1968, the Board may issue up to one half of the applicants, selected in the discretion of the Board, a renewal of license to practice nursing for the period beginning January 1, 1966, and ending December 31, 1966, for a fee of two dollars and fifty cents ($2.50). (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1955, c. 1266, s. 3; 1965, c. 578, s. 1.)

§ 90-171.3. Reinstatement of lapsed license.—A licensee who has allowed license to lapse by failure to renew as herein provided may apply for reinstatement on a form provided by the Board. The Board shall require the applicant to return the completed application with the required fee and to furnish a statement of the reason for failure to apply for renewal prior to the deadline. If the license has lapsed for at least five years, the Board may require the applicant to submit proof of competence to practice nursing. The Board may require any applicant for reinstatement to satisfy the Board that the license should be reinstated. If, in the opinion of the Board, the applicant has so satisfied the Board, it shall issue a renewal of license to practice nursing, or it shall issue a license to practice nursing for a limited time. (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1955, c. 1266, s. 3; 1965, c. 578, s. 1.)

§ 90-171.4. Inactive list.—(a) A licensee who desires to retire temporarily from the practice of nursing in North Carolina shall request inactive status on a form provided by the Board. Upon receipt of the application, the Board shall issue to the licensee a statement of inactive status, and shall place the name of the licensee on the inactive list. While remaining on the inactive list, the individual shall not be subject to renewal fees and shall not practice nursing in North Carolina.

(b) If and when such person desires to be removed from the inactive list and returned to active status, an application shall be submitted on a form provided by the Board, and the fee shall be paid for renewal of license. The Board may require proof of competence to resume the practice of nursing, and if such proof is satisfactory to the Board, the Board shall return the applicant to active status and issue a license, or issue a license for a limited period. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-171.5. Revocation, suspension, or denial of license.—The Board may, after notice and hearing in accordance with the provisions of chapter 150 of the General Statutes, revoke or suspend any license to practice nursing which

has been issued by the Board or any predecessor board, or deny any license which has been applied for in accordance with this article, if the Board shall determine upon findings of facts supported by competent evidence adduced at such hearing that such person:

(1) Has practiced fraud or deceit in procuring or attempting to procure a license to practice nursing;
(2) Has been convicted of a felony or any other crime involving moral turpitude;
(3) Is guilty of gross immorality or dishonesty;
(4) Is addicted to alcoholic or other drug habits to such a degree as to render him or her unfit or unworthy to practice nursing;
(5) Is guilty of any unprofessional or dishonorable conduct unworthy of, and affecting, the practice of his or her profession;
(6) Is unfit or incompetent to practice nursing by reason of negligence or habits;
(7) Is mentally or physically incompetent to practice nursing. (1947, c. 1091, s. 1; 1953, c. 1041, s. 15; c. 1199, ss. 1, 5; 1965, c. 578, s. 1.)

§ 90-171.6. Standards for educational units in nursing.—The Board shall:

(1) Register as accredited such educational units in nursing as shall meet the requirements of this article and of the Board with respect to curricula and standards;
(2) Prescribe standards for educational units in nursing which prepare persons for nursing and for the examination leading to certification as registered nurses or licensed practical nurses; the standards approved by the North Carolina Board of Nurse Registration and Nursing Education and North Carolina Board of Nurse Registration and Nursing Education Enlarged on May 30, 1963, shall be the prescribed standards; before making any substantive change in the standards, the Board shall hold a hearing to consider any such change; and the Board shall give all educational units in nursing at least thirty days' notice of the date and place of the hearing and of the proposed change;
(3) Provide for surveys of such units for purposes of evaluation and consultation at such times as it may deem necessary;
(4) Evaluate and approve courses for affiliation; and
(5) At intervals prepare and make a list, for public distribution, of educational units in nursing in this State approved by the Board as meeting the requirements of this article and of the Board. (1947, c. 1091, s. 1; 1953, c. 1199, ss. 1, 6; 1965, c. 578, s. 1.)

§ 90-171.7. Basic requirements for accreditation of an educational unit in nursing.—An educational unit in nursing in order to be accredited by the Board shall meet the following standards and requirements:

(1) An educational unit in nursing leading to licensure may be operated under the authority of a general hospital, an educational institution or agency, or any other authority satisfactory to and approved by the Board.
(2) The educational unit shall be conducted in connection with or by using resources of one or more general hospitals. Special hospitals and other resources may be used in addition to a general hospital.
(3) The educational unit shall give instruction in the biological, social and physical sciences, and in nursing care of mothers and newborn infants, children, mentally ill patients, and those with common medical and surgical conditions. Educational units for practical nursing shall not be required to include instruction in the care of mentally ill patients.

(4) The hospital or hospitals and/or other agencies with which the educational unit is affiliated shall provide clinical facilities so that each student may obtain the appropriate instruction and experience in nursing care of patients.

(5) The educational unit shall provide minimum instructional facilities as follows:

a. It shall have a library consisting of references sufficient in number, diversified and in late editions so as to be suitable for reference and study in connection with the basic curriculum required for an educational unit in nursing, which library shall be physically located so as to be easily accessible to the students.

b. It shall have adequate classrooms, laboratory facilities, and other suitable instructional facilities sufficient to accommodate the student body and to instruct the students.

c. The members of the faculty of the educational unit in nursing shall have general academic and professional qualifications as determined by the Board and shall be sufficient in number to effectively administer, teach, and supervise the students at the educational unit. In evaluating the members of the faculty as to qualifications and number, the Board shall recognize and take into consideration the limited availability and supply of nurses prepared for teaching positions.

(6) The educational unit in nursing shall keep and maintain an accurate system of records containing up-to-date and complete information regarding the hours spent by each student in instruction and experience, and the progress of each student graded under a suitable system. The form, content and other requirements with respect to records shall be subject to the approval of the Board. The records shall be readily accessible and shall be subject to inspection by the Board or its authorized representatives. Any person who shall intentionally falsify any record required to be kept and maintained by this article and regulations of the Board made pursuant to this article shall be guilty of a misdemeanor and punishable as such.

(7) An educational unit in nursing shall, from time to time and in accordance with regulations adopted by the Board, file with the Board such records, data, and reports as may be prescribed furnishing information concerning the conduct of the unit and concerning any student or graduate of the unit, as required by the Board. (1947, c. 1091, s. 1; 1953, c. 1199, ss. 1, 6; 1965, c. 578, s. 1.)

§ 90-171.8. Periodic surveys of accredited educational units.—(a) A survey of each accredited educational unit in nursing and of the institution or institutions with which the unit is associated shall be made by the executive director or other representative of the Board at such times as may be determined by the Board.

(b) A written report of the survey of an educational unit in nursing shall be submitted to the Board at a regular or special meeting and a copy of the report shall be sent to the educational unit in nursing.

(c) If the Board determines, from the report of the survey and other evidence that the unit is meeting requirements and standards prescribed by this article and the Board for the conduct of an educational unit in nursing, the Board shall approve the unit as accredited and shall order the name of the educational unit in nursing to be continued on the accredited list.

(d) If the Board determines from the report of the survey and other evidence that the unit is not meeting requirements and standards prescribed by this article

and the Board, the Board shall take action as specified in § 90-171.11. (1953, c. 1199, ss. 1, 7; 1965, c. 578, s. 1.)

§ 90-171.9. Procedure for accreditation of new educational unit; provisional accreditation.—(a) An institution wishing to establish a unit shall first apply for permission from the Board to establish such a unit.

The institution applying shall submit to the Board a written plan of organization containing a statement of:

(1) The purposes and aims of the institution in establishing the unit;
(2) The composition, powers, duties, and responsibilities of the governing body of the unit;
(3) The financial plan for operating the unit;
(4) The titles and duties of the members of the faculty and the qualifications required of each;
(5) The proposed curriculum and the plan for its administration;
(6) The clinical resources available, such as hospitals and other agencies, affiliated with or in connection with which the unit will be conducted;
(7) The standards to be met by the students;
(8) Such other written evidence as shall be necessary to satisfy the Board that the unit is able and willing to provide instruction and experience in accordance with the requirements for accreditation as prescribed by the Board; and
(9) Written evidence sufficient to satisfy the Board that the unit can and will comply with the minimum standards and requirements for accreditation upon the enrollment of students and the commencement of the operation of the unit.

(b) The executive director or other representative of the Board shall conduct a general survey of the proposed educational program and facilities and shall submit a written report of the survey to the Board with respect to the proposed unit and the institution which has applied for permission to establish it.

(c) The Board, at a meeting at which representatives of the petitioning institution may appear after reasonable written notice, shall consider the plan of organization, the report of survey, and such other evidence as may be presented, and shall act upon the application at the same or at a subsequent meeting.

(d) If the application to establish an educational unit in nursing is approved and the unit enrolls its first class of students within one year after approval, the unit shall be provisionally accredited for a period of one year beginning with the date of the enrollment of the first class of students, and the name of the unit shall be placed on the provisionally accredited list. (1947, c. 1091, s. 1; 1953, c. 1199, ss. 1, 6; 1965, c. 578, s. 1.)

§ 90-171.10. Procedure for removal from provisionally accredited list.—(a) Within the first year of operation by the unit under provisional accreditation, the Board shall make a survey of the unit. If the unit is meeting requirements and standards prescribed by this article and by the Board, it shall be placed on the accredited list.

(b) If the unit is not meeting the standards and requirements as prescribed by this article and the Board, the Board shall cause a notice to be served upon the unit and a hearing scheduled as specified in § 90-171.13.

(c) If the Board shall determine from evidence presented at the hearing that the unit is complying with requirements and standards for the conduct of an educational unit in nursing as prescribed by this article and the Board, the Board shall place the name of the unit on the accredited list.

(d) If the Board shall determine from evidence presented at the hearing that the unit is not complying with the requirements and standards for the conduct of an educational unit in nursing prescribed by this article and the Board, the Board may enter an order either continuing the name of the unit on the provisionally

accredited list for not more than one additional year, and the unit shall be so notified; or removing the name of the unit from the provisionally accredited list which action constitutes discontinuance of operation of the educational unit in nursing. Notification to the unit of this action shall be in accordance with the procedure specified in § 90-171.13.

(e) If an educational unit in nursing has been provisionally accredited for two consecutive years and the Board determines, from survey and other evidence, that the unit has not met the requirements and standards of this article and the Board prescribed for the conduct of an educational unit in nursing, the Board shall hold a hearing in accordance with procedure specified in § 90-171.13. Following the hearing and consideration of all evidence presented, the Board shall place the unit on the accredited list or enter an order removing the name of the unit from the provisionally accredited list which shall constitute discontinuance of operation of the educational unit in nursing. The action of the Board shall be in accordance with the procedure specified in § 90-171.13. (1947, c. 1091, s. 1; 1953, c. 1199, ss. 1, 6; 1965, c. 578, s. 1.)

§ 90-171.11. Procedure for placing unit on conditional accreditation.—(a) If the Board, at a regular or special meeting, determines from survey of an educational unit in nursing and other evidence available that a unit on the accedited list appears not to be complying with the requirements and standards prescribed by this article and the Board, the Board shall order the executive director to give written notice to the unit, specifying the particulars of apparent noncompliance with the requirements and standards.

(b) The notice shall be sent to the unit by registered mail and shall state that if the unit fails to correct the conditions and the deficiencies so as to comply fully with the requirements and standards for the conduct of units within a period of one year following the date upon which the written notice was placed in the United States mails, the unit will be removed from the fully accredited list and placed upon the list of conditionally accredited educational units in nursing (hereinafter referred to as the "conditionally accredited list"), pending a formal hearing before the Board to determine whether the unit is complying with the requirements and standards. At the end of the year referred to in the notice of apparent noncompliance given to the unit, a committee of at least three members of the Board designated by the Board shall visit and survey the unit as a basis for making a preliminary determination as to whether the unit has corrected the deficiencies specified in the notice; and if the committee shall determine that the unit has not corrected all of those deficiencies specified and is not complying with the requirements and standards for the conduct of educational units in nursing as required by this article and the Board, the committee shall direct the executive director to remove the unit from the fully accredited list and place the unit on the conditionally accredited list until further action by the Board. The unit shall be so notified in writing. (1965, c. 578, s. 1.)

§ 90-171.12. Procedure for removing unit from conditionally accredited list.—(a) At a regular or special meeting, if the Board determines from survey of a unit on conditional accreditation and other evidence presented that the unit is meeting the requirements and standards prescribed by this article and the Board, it shall place the educational unit in nursing on the accredited list and notify the unit in writing of the Board's action.

(b) If the Board determines from all evidence presented that the unit operating under conditional accreditation is not complying with the requirements and standards as prescribed by this article and the Board, a hearing shall be held in accordance with procedure specified in § 90-171.13.

(c) If the Board shall determine from evidence presented at the hearing that the unit is complying with requirements and standards for the conduct of an educational unit in nursing as prescribed by this article and the Board, the Board shall place the name of the unit on the accredited list.

(d) If the Board shall determine from evidence presented at the hearing that the unit is not complying with the requirements and standards for the conduct of an educational unit in nursing prescribed by this article and the Board, the Board shall enter an order removing the name of the unit from the conditionally accredited list which action constitutes discontinuance of operation of the educational unit in nursing. Notification to the unit of this action shall be in accordance with the procedure specified in § 90-171.13. (1965, c. 578, s. 1.)

§ 90-171.13. Notice and hearing on educational unit.—(a) The Board shall cause a notice to be served on any unit operating under provisional accreditation or conditional accreditation if such unit is not complying with the requirements and standards for the conduct of an educational unit in nursing prescribed by this article and the Board, by:

(1) Notifying the unit in writing that the survey and other evidence indicates that the unit is not complying with the standards and requirements for accreditation as prescribed;

(2) Setting forth the respects in which the unit is not complying; and

(3) Notifying the unit that a hearing will be held before the Board on a specified date not less than twenty days from the date on which the notice was given, and setting forth the time and place of such hearing.

(b) The educational unit shall have the right and opportunity to present witnesses and other evidence on the question of its compliance with the standards and requirements for accreditation, to cross-examine other witnesses, and to be fully represented at the hearing by legal counsel.

(c) A transcript of the proceedings of the hearing shall be made. Any party to the proceedings shall be entitled to a copy of the record upon payment of the cost thereof as determined by the Board.

(d) After hearing the witnesses and receiving other evidence presented at the hearing, the Board shall give consideration to all of the evidence, and upon such evidence shall make findings of fact and conclusions.

(e) If the Board shall determine from findings of fact and conclusions based upon evidence received at such hearing that the unit is complying with the standards and requirements for accreditation, the Board shall place the name of the unit on the accredited list.

(f) If the Board shall determine from findings of fact and conclusions based upon evidence received at such hearing that the unit is not complying with the standards and requirements for accreditation, it shall take the appropriate action as is specified in § 90-171.10 or § 90-171.12, whichever is applicable.

(g) In the event the Board enters an order directing removal of the name of the unit from the provisionally or conditionally accredited list and discontinuance of operation of the educational unit, the written order to the educational unit shall specify that the order is to become effective twenty days after the date of mailing of the order. A copy of the findings and conclusions and orders of the Board, certified by the executive director, shall be mailed to the unit together with an order to discontinue operation of the educational unit and to admit no further students. (1953, c. 1199, ss. 1, 8; 1965, c. 578, s. 1.)

§ 90-171.14. Effect of provisionally and conditionally accredited status.—When an educational unit in nursing shall have been placed upon the provisionally or conditionally accredited list in accordance with the procedure herein prescribed, the effect of such action shall be so to list the educational unit for the information of students and prospective students and other persons, institutions, and organizations interested in education for nursing in North Carolina. Insofar as applicants for examination for licensure as nurses in North Carolina are concerned, the appearance of the name of an educational unit on the provisionally or conditionally accredited list shall have the same effect as if said

educational unit had continued on the fully accredited list. (1953, c. 1199, ss. 1, 8; 1965, c. 578, s. 1.)

§ 90-171.15. Appeals.—Appeals from determinations of the Board with respect to the accreditation of education units in nursing shall be taken in accordance with article 33 of chapter 143 of the General Statutes. (1953, c. 1199, ss. 1, 9; 1965, c. 578, s. 1.)

§ 90-171.16. Educational units in nursing to be encouraged.—The Board shall encourage the continued operation of all present educational units in nursing and promote the establishment of additional units. (1965, c. 578, s. 1.)

Cross Reference.—See Editor's note to § 90-158.

Article 11.

Veterinaries.

§ 90-183.2. Annual registration with Board; fee. — Every person heretofore or hereafter licensed to practice veterinary medicine by said Board shall during the month of January, 1962, and during the month of January in every year thereafter, register with the secretary-treasurer of said Board his name and office and residence address and such other information as the Board may deem necessary and shall pay a registration fee fixed by the Board not in excess of twenty-five dollars ($25.00). In the event a veterinarian fails to register as herein provided within 30 days after notification by certified mail to his last known home address, he shall pay an additional amount of ten dollars ($10.00) to the Board. Should a veterinarian fail to register and pay the fees imposed, the license of such veterinarian may be suspended by the Board. Upon payment of all fees which may be due, the license of any such veterinarian shall be reinstated. (1961, c. 353, s. 6; 1967, c. 796.)

Editor's Note.—The 1967 amendment increased the annual registration fee from $5.00 to $25.00.

Article 12.

Podiatrists.

§ 90-188. Podiatry defined.

Editor's Note.—Session Laws 1967, c. 1217, s. 1, effective July 1, 1967, changed the title of this article from "Chiropodists" to "Podiatrists."

§ 90-189. Unlawful to practice unless registered. — On and after the first of July, one thousand nine hundred and nineteen, it shall be unlawful for any person to practice or attempt to practice podiatry in this State or to hold himself out as podiatrist or to designate himself or describe his occupation by the use of any words or letters calculated to lead others to believe that he is a podiatrist unless he is duly registered as provided in this article. (1919, c. 78, s. 1; C. S., s. 6764; 1963, c. 1195, s. 2; 1967, c. 1217, s. 2.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, deleted "chiropodist" twice and removed the parentheses from around the word "podiatrist" twice.

§ 90-190. Board of Podiatry Examiners; how elected; terms of office.—There shall be established a Board of Podiatry Examiners for the State of North Carolina. This Board shall consist of three members who shall be elected by the North Carolina Podiatry Society. All of such members shall be chiropodists who have practiced podiatry in North Carolina for a period of not less than one year. The members of the Board shall be elected by said Society for a term of three years: Provided, the members of the first Board shall be elected to hold office for one, two and three years respectively, and one member shall be elected

annually thereafter by said Society. The Board shall have authority to elect its own presiding and other officers. (1919, c. 78, s. 3; C. S., s. 6765; 1963, c. 1195, s. 2; 1967, c. 1217, s. 3.)

Editor's Note.—
The 1967 amendment, effective July 1, 1967, substituted "elected" for "appointed" once in the second sentence and three times in the fourth sentence, substituted "North Carolina Podiatry Society" for "North Carolina Pedic Association" at the end of the second sentence, and substituted "Society" for "Association" twice in the fourth sentence.

§ 90-191. Applicants to be examined; examination fee; requirements.—Any person not heretofore authorized to practice podiatry in this State shall file with the Board of Podiatry Examiners an application for examination accompanied by a fee of twenty-five dollars, together with proof that the applicant is more than twenty-one years of age, is of good moral character, and has obtained a preliminary education equivalent to four years' instruction in a high school and two (2) years of instruction in a college or university approved by the American Association of Colleges and Universities. Such applicant before presenting himself for examination, must be a graduate of a legally incorporated school of podiatry and accredited by the National Council on Education of American Podiatry Association. (1919, c. 78, s. 9; C. S., s. 6766; 1963, c. 1195, ss. 1, 2; 1967, c. 1217, s. 4.)

Editor's Note.—
The 1967 amendment, effective July 1, 1967, substituted "and accredited by the National Council on Education of American Podiatry Association" for "acceptable to the Board" at the end of this section.

§ 90-192. Examinations; subjects; certificates.—The Board of Podiatry Examiners shall hold at least one examination annually for the purpose of examining applicants under this article. The examination shall be held at such time and place as the Board may see fit, and notice of the same shall be published in one or more newspapers in the State. The Board may make such rules and regulations as it may deem necessary to conduct its examinations and meetings. It shall provide such books, blanks and forms as may be necessary to conduct such examinations, and shall preserve and keep a complete record of all its transactions. Examinations for registration under this article shall be in the English language and shall be written, oral, or clinical, or a combination of written, oral, or clinical, as the Board may determine, and shall be in the following subjects wholly or in part: Anatomy, physiology, pathology, bacteriology, chemistry, dermatology, podiatry, surgery, materia medica, pharmacology and pathology; limited in their scope to the treatment of the foot. No applicant shall be granted a certificate unless he obtains a general average of seventy-five or over, and not less than fifty percent in any one subject. After such examination the Board shall, without unnecessary delay, act on same and issue certificates to the successful candidates, signed by each member of the Board; and the Board of Podiatry Examiners shall report annually to the North Carolina Podiatry Society. (1919, c. 78, s. 4; C. S., s. 6767; 1963, c. 1195, s. 2; 1967, c. 1217, s. 5.)

Editor's Note.—
The 1967 amendment, effective July 1, 1967, substituted "dermatology, podiatry, surgery, materia medica, pharmacology and pathology" for "diagnosis and treatment, therapeutics, clinical podiatry and asepsis" in the list of subjects in the fifth sentence and substituted "North Carolina Podiatry Society" for "North Carolina Pedic Association" at the end of the section.

§ 90-193. Reexamination of unsuccessful applicants.—An applicant failing to pass his examination shall within one year be entitled to reexamination upon the payment of fifteen dollars, but not more than two reexaminations shall be allowed any one applicant. Should he fail to pass his third examination he shall

file a new application before he can again be examined. (1919, c. 78, s. 6; C. S., s. 6768; 1967, c. 1217, s. 6.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, increased the fee from two dollars to fifteen dollars.

§ **90-194**: Repealed by Session Laws 1967, c. 1217, s. 7, effective July 1, 1967.

§ **90-195**: Repealed by Session Laws 1967, c. 1217, s. 8, effective July 1, 1967.

§ **90-196**: Repealed by Session Laws 1967, c. 691, s. 59, effective July 1, 1967.

§ **90-197. Revocation of certificate; grounds for; suspension of certificate.** — The Board of Podiatry Examiners may revoke by a majority vote of its members, and in accordance with the provisions of chapter 150 of the General Statutes, any certificate it has issued, for any of the following causes:

(1) The willful betrayal of a professional secret.

(2) Any person who in any affidavit required of the applicant for certificate, registration, or examination under this article shall make a false statement.

(3) Any person convicted of a crime involving moral turpitude.

(4) Any person habitually indulging in the use of narcotics, ardent spirits, stimulants or any other substance which impairs intellect and judgment to such an extent as in the opinion of the Board to incapacitate such person for the performance of his professional duties.

The Board may, in accordance with the provisions of chapter 150 of the General Statutes, suspend any certificate granted under this article for a period not exceeding six months on account of any misconduct on the part of the person registered which would not, in the judgment of the Board, justify the revocation of his certificate. (1919, c. 78, ss. 12, 13; C. S., s. 6772; 1953, c. 1041, ss. 17, 18; 1963, c. 1195, s. 2; 1967, c. 691, s. 45.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, deleted "and cause the name of the holder to be stricken from the book of the registration by the clerk of the court in the city or county in which the name of the person whose certificate is revoked is registered" following "has issued" near the beginning of the section.

§ **90-198. Fees for certificates and examinations; compensation of Board.**—To provide a fund in order to carry out the provisions of this article the Board shall charge not more than fifty dollars for each certificate issued and twenty-five dollars for each examination. From such funds all expenses and salaries, not exceeding seven dollars per diem for each day actually spent in the performance of the duties of the office and actual travel expenses including mileage at the rate of nine cents per mile in addition, shall be paid by the Board: Provided, that at no time shall the expenses exceed the cash balance on hand. (1919, c. 78, s. 14; C. S., s. 6773; 1967, c. 1217, s. 9.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, changed the fee for certificates from ten dollars to not more than fifty dollars, increased the fee for examinations from fifteen dollars to twenty-five dollars, increased the per diem amount from four dollars to seven dollars, and substituted "actual travel expenses including mileage at the rate of nine cents per mile" for "actual railroad expenses" in the second sentence.

§ **90-199. Annual fee; cancellation or renewal of license.**—On or before the first day of July of each year every podiatrist engaged in the practice of podiatry in this State shall transmit to the secretary-treasurer of the said

North Carolina State Board of Podiatry Examiners his signature and post-office address, the date and year of his or her certificate, together with a fee to be set by the Board of Podiatry Examiners not to exceed fifty dollars ($50.00) and receive therefor a renewal certificate. Any license or certificate granted by said Board under or by virtue of this section shall automatically be cancelled and annulled if the holder thereof fails to secure the renewal herein provided for within a period of 30 days after the first day of July of each year, and such delinquent podiatrist shall pay a penalty for reinstatement of five dollars ($5.00) for each succeeding month of delinquency until a six-month period of delinquency exists. After a six-month period of delinquency exists, or after January first following the July first deadline, the said podiatrist must appear before the North Carolina Board of Podiatry Examiners and take a new examination before being allowed to practice podiatry in the State of North Carolina. (1931, c. 191; 1963, c. 1195, s. 2; 1967, c. 1217, s. 10.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, substituted "podiatrist" for "chiropodist" near the beginning of the first sentence, increased the limit on the annual fee therein from ten dollars to fifty dollars, rewrote the second sentence, and added the last sentence.

§ **90-200**: Repealed by Session Laws 1967, c. 1217, s. 11, effective July 1, 1967.

§ **90-202.1. Free choice by patient guaranteed.**—No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose the provider of care or service which are within the scope of practice of a duly licensed podiatrist or duly licensed physician as defined in this chapter. (1967, c. 690, s. 3.)

Editor's Note.—Session Laws 1967, c. 690, s. 6, makes the act effective July 1, 1967.

Session Laws 1967, c. 690, s. 4, provides: "Nothing in this act shall be construed to equate podiatrists with physicians except to the extent that each must be duly licensed."

Article 13.

Embalmers and Funeral Directors.

§ **90-203. State Board; members; election; qualifications; terms; vacancies.**—(a) The practice of embalming and funeral directing in the State of North Carolina is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the embalming and funeral directing professions merit and receive the confidence of the public and that only qualified persons be permitted to practice embalming and funeral directing in the State of North Carolina. This article shall be liberally construed to carry out these objects and purposes.

(b) The North Carolina State Board of Embalmers and Funeral Directors heretofore created by chapter 338, Public Laws, 1901, by chapter 174, Public Laws, 1931, by chapter 951, Public Laws, 1949, and chapter 1240, Public Laws, 1957, is hereby continued as the agency of the State for the regulation of the practice of embalming and funeral directing in this State. Said Board of Embalmers and Funeral Directors shall consist of five embalmers who are licensed to practice embalming in North Carolina and two funeral directors who are licensed to practice funeral directing in North Carolina and who possess other qualifications hereinafter specified and who shall have been elected in an election held as hereinafter provided in which every person licensed to practice embalming and funeral directing in North Carolina shall be entitled to vote. Each embalmer of said Board

shall be elected for a term of five years and until his successor shall be elected and shall qualify and each funeral director of said Board shall be elected for a term of two years and until his successor shall be elected and shall qualify. Each year there shall be elected one embalmer for a term of five years and one funeral director for a term of two years. Any vacancy occurring on said Board shall be filled for the period of the unexpired term by a majority vote of the remaining members of the Board. No embalmer shall be nominated for membership on said Board, or shall be elected to membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice embalming in North Carolina and actually engaged in the practice of embalming in North Carolina and unless he has had such license to practice embalming in North Carolina for not less than five consecutive years prior thereto. No funeral director shall be nominated for membership on said Board or shall be elected to membership on said Board, unless, at the time of such nomination and at the time of such election, he is licensed to practice funeral directing in North Carolina and actually engaged in the practice of funeral directing in North Carolina and unless he has had such license to practice funeral directing in North Carolina for not less than five consecutive years prior thereto. In addition to the seven members above provided for, the president of the State Board of Health shall serve ex officio as a member of said Board.

(c) Nominations and elections of members of the North Carolina State Board of Embalmers and Funeral Directors shall be as follows:

(1) An election shall be held each year to elect an embalmer and a funeral director for membership on the Board of Embalmers and Funeral Directors, each to take office on the first day of January following the election and the embalmer to hold office for a term of five years and until his successor has been elected and shall qualify and the funeral director to hold office for a term of two years and until his successor has been elected and shall qualify; provided that if in any year the election of the members of such Board for that year shall not have been completed by January 1, of that year, then the said members elected that year shall take office immediately after the completion of the election and the embalmer shall hold office until the first of January of the fifth year thereafter and until his successor is elected and qualified and the funeral director shall hold office until the first of January of the second year thereafter and until his successor is elected and qualified.

(2) Every embalmer and funeral director with a current North Carolina license shall be eligible to vote in all elections. The holding of such a license to practice embalming or funeral directing in North Carolina shall constitute registration to vote in such elections. The list of licensed embalmers and funeral directors shall constitute the registration list for elections.

(3) All elections shall be conducted by the State Board of Embalmers and Funeral Directors which is hereby constituted a Board of Embalming and Funeral Directing Elections. If a member of the State Board of Embalmers and Funeral Directors whose position is to be filled at any election is nominated to succeed himself, and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Embalming and Funeral Directing Elections for that election and the remaining members of the Board of Embalming and Funeral Directing Elections shall proceed and function without his participation.

(4) Nomination of candidates for election shall be made to the Board of Embalming and Funeral Directing Elections by a written petition signed by not less than twenty embalmers or funeral directors licensed to

practice in North Carolina, and filed with said Board of Embalming and Funeral Directing Elections subsequent to the 15th day of May of the year in which the election is to be held and not later than midnight of the 15th day of August of such year, or not later than such earlier date (not before July 1) as may be set by the Board of Embalming and Funeral Directing Elections: Provided, that not less than ten days' notice of such earlier date shall be given to all embalmers and funeral directors qualified to sign a petition of nomination.

(5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Embalming and Funeral Directing Elections or its designated secretary at any time prior to the closing of the polls in any election.

(6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Embalming and Funeral Directing Elections shall prescribe, ballots containing, in alphabetical order, the names of all nominees; and each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Embalming and Funeral Directing Elections. At such time as may be fixed by the Board of Embalming and Funeral Directing Elections a ballot and a return official envelope addressed to said Board shall be mailed to each embalmer and funeral director licensed to practice in North Carolina, together with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

"Serial No. of Envelope .....
Signature of Voter .....
Address of Voter .....
.....

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)."

The Board of Embalming and Funeral Directing Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless within the time hereinafter provided, it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

(7) The date and hour fixed by the Board of Embalming and Funeral Directing Elections as the latest time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.

(8) The said ballots shall be canvassed by the Board of Embalming and Funeral Directing Elections beginning at noon on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed embalmer or funeral director may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope

(with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

(9) If one of the nominees shall receive a majority of the votes cast, he shall be declared elected. If no candidate shall receive a majority of the votes cast, the said Board shall order a second election to determine a contest between the two candidates receiving the highest number of votes. In any election if there is a tie between candidates, the tie shall be resolved by the vote of the State Board of Embalmers and Funeral Directors, provided that if a member of that Board is one of the candidates in the tie, he may not participate in such vote.

(10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements.

(11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations because of lack of plural or proper nominations or death, or withdrawal, or disqualification or any other reason, there shall be (i) only one candidate for a position, he shall be declared elected by the Board of Embalming and Funeral Directing Elections, or (ii) no candidate for a position, the position shall be filled by the State Board of Embalmers and Funeral Directors. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the State Board of Embalmers and Funeral Directors. In the event of the death or resignation of a member of the State Board of Embalmers and Funeral Directors, after taking office, his position shall be filled for the unexpired term by the State Board of Embalmers and Funeral Directors.

(12) An official list of all licensed embalmers and funeral directors shall be kept at an office of the Board of Embalming and Funeral Directing Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed embalmer or funeral director. As soon as the voting in any election begins a list of the licensed embalmers and funeral directors shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.

(13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the Board of Embalming and Funeral Directing Elections for a period of six months following the close of an election.

(14) From any decision of the Board of Embalming and Funeral Directing Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by article 33 of chapter 143 of the General Statutes of North Carolina.

(15) The Board of Embalming and Funeral Directing Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed embalmers and funeral directors.

(d) The Board of Embalming and Funeral Directing Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said Board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered embalmers and funeral directors, for the issuance and the receipt of envelopes and ballots. (1901, c. 338, ss. 1-3; Rev., s. 4384; C. S., s. 6777; 1931, c. 174; 1945, c. 98, s. 1; 1949, c. 951, s. 1; 1957, c. 1240, s. 1; 1965, c. 630, s. 1.)

Editor's Note.—

The 1965 amendment rewrote this section.

Sections 2, 3, and 4 of c. 630, Session Laws 1965, provided for the first election and terms of one embalmer and one funeral director as members of the North Carolina State Board of Embalmers and Funeral Directors; designated the members of the North Carolina State Board of Embalmers and Funeral Directors and the Board of Embalming and Funeral Directing Elections, as well as the duties and terms of such members; and provided that the act should be construed in conformity with existing laws, but that laws in irreconciliable conflict were repealed.

§ 90-210. **Grant of license to embalmers.**—No person shall engage in the practice of embalming without first obtaining the license herein provided. Every person not licensed as an embalmer, now engaged or desiring to engage in the practice of embalming dead human bodies, shall make written application to the Board for a license, accompanying the same with a fee of fifteen dollars ($15.00) whereupon the applicant shall present himself before the Board at a time and place fixed by the Board, and if the Board shall find upon due examination that the applicant is a resident of North Carolina, a citizen of the United States, 21 years of age, of good moral character, as evidenced by at least two affidavits to that effect; possessed of high school education of not less than sixteen Carnegie units or the equivalent thereof, such equivalence to be determined by the Board in its discretion, has completed a minimum of twelve months of service as an apprentice under the supervision of a licensed and practicing embalmer, who shall make affidavit upon the application that said applicant has had such experience under him, possessed of skill and knowledge of said science of embalming and the care and disposition of the dead, and has a responsible knowledge of sanitation and the disinfection of bodies of deceased persons and the apartment, clothing, and bedding, in case of death from infectious or contagious disease, and has had a special course of at least nine months in embalming in an approved school in mortuary science, the Board shall issue to such applicant a license to practice the art of embalming and the care and disposition of the dead and shall register such applicant as a duly licensed embalmer, such license shall be signed by a majority of the Board and attested by its seal. (1901, c. 338, ss. 9, 10; Rev., s. 4388; 1917, c. 36; 1919, c. 88; C. S., s. 6781; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, s. 2; 1965, c. 720.)

Editor's Note. — The 1965 amendment substituted "twelve months" for "twenty-four months" near the middle of the section.

§ 90-210.1. Renewal; registration; display of license. — All persons receiving a license as an embalmer under the provisions of this article shall register the fact at the office of the board of health of the city or county in which it is proposed to carry on said practice and shall display said license in a conspicuous place in the office of such licentiate. Every registered embalmer who desires to continue the practice of his profession shall annually, during the time he shall continue in such practice, on such day as the Board may determine, pay to the secretary of the Board, a fee not in excess of fifteen dollars ($15.00) for the renewal registration, as determined by the Board. (1901, c. 338, ss. 9, 10; Rev., s. 4388; 1917, c. 36; 1919, c. 88; C. S., s. 6781; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, s. 2; 1967, c. 691, s. 46.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, substituted "or county" for "and where there is no board of health, with the clerk of the superior court in the county or counties" in the first sentence.

§ 90-210.4. Powers of Board.

If a body is delivered to a funeral home because its agent had engaged in unprofessional conduct proscribed by this section, that same statute empowers the State Board of Embalmers and Funeral Directors to take appropriate action. Parker v. Quinn-McGowen Co., 262 N.C. 560, 138 S.E.2d 214 (1964).

Unauthorized Embalming Does Not Support Cause of Action for Mental Anguish.—The bare fact of an unauthorized embalming, without more, does not constitute such a mishandling or mutilation of a body as will support a cause of action by the next of kin for mental anguish. Parker v. Quinn-McGowen Co., 262 N.C. 560, 138 S.E.2d 214 (1964).

§ 90-210.7. Suspicious circumstances surrounding death. — It shall be unlawful and punishable, as provided in G.S. 90-210.6, for any person for any reason to remove or embalm a dead human body when any fact within his knowledge or brought to his attention, is sufficient to arouse suspicion of a crime in connection with the cause of death of the deceased, until the permission of the medical examiner or other official of competent jurisdiction, shall have first been obtained. (1957, c. 1240, s. 2; 1967, c. 1154, s. 2.)

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "medical examiner" for "coroner" near the end of this section.

§ 90-210.12. Renewal; registration; display of license.—All persons receiving a license as a funeral director under the provisions of this article shall register the fact at the office of the board of health of the city or county in which it is proposed to carry on said practice and shall display said license in a conspicuous place in the office of such licentiate. Every registered funeral director who desires to continue the practice of his profession shall annually, during the time he shall continue in such practice, on such day as the Board may determine, pay to the secretary of the Board, a fee not in excess of fifteen dollars ($15.00) for the renewal registration, as determined by the Board. (1901, c. 338, ss. 9, 10; Rev., s. 4388; 1917, c. 36; 1919, c. 88; C. S., s. 6781; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, s. 2; 1967, c. 691, s. 47.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, substituted "or county" for "and where there is no board of health, with the clerk of the superior court in the county or counties" in the first sentence.

§ 90-210.17. Registration of funeral establishments.—(a) The term "Board" as used herein means the North Carolina State Board of Embalmers and Funeral Directors and the term "funeral establishment" means a place of business used in the care and preparation for burial or transportation or other disposal of dead human bodies, or any place or premises at or from which any person or persons shall represent himself or themselves or hold out himself or themselves as being engaged in the profession of funeral directing.

(b) No person, firm, partnership, corporation or association shall operate or maintain a funeral establishment without first obtaining a registration certificate as herein provided. Each funeral establishment shall be under the immediate and personal supervision, direction, management and control of a person or persons licensed as a funeral director under the terms of this article.

(c) Each funeral establishment shall apply to the Board for a registration certificate on forms to be provided by the Board and shall report under oath any facts requested by the Board as evidence that such establishment meets the requirements of this article. Said application shall be accompanied by a fee not in excess of twenty-five dollars ($25.00), with such fee to be determined by the Board. Upon the filing of a proper application, meeting all legal requirements, accompanied by the required fee, the Board shall issue to the establishment the registration certificate applied for. Each holder of a registration certificate shall annually on or before the first day of January submit to the Board an application for renewal of such certificate together with a fee not in excess of twenty-five dollars ($25.00), with such fee to be determined by the Board.

(d) All funeral establishments receiving a registration certificate under the provisions of this article shall register the fact at the office of the board of health of the county in which such funeral establishment is located, and every funeral establishment shall display said registration certificate in a conspicuous place in the establishment.

(e) The Board may suspend or revoke any registration certificate for a funeral establishment or may place the holder thereof on a term of probation if the Board shall find any of the following:

(1) That the funeral establishment fails to comply with the provisions of this article;

(2) That the manager, an agent or employee of the funeral establishment has violated any State law or municipal ordinance or regulation, any of which relate to the handling, custody, care or transportation of dead human bodies; provided, however, the provisions of this subdivision shall not be applicable to speeding offenses or other minor traffic violations;

(3) That the funeral establishment fails to comply with any law relative to sanitation, health and the protection of the public from contagious and infectious diseases with respect to the handling of dead human bodies.

(f) All proceedings for the suspension or revocation of a registration certificate shall be in accordance with the Uniform Revocation of Licenses Act. (1965, c. 719; 1967, c. 691, s. 48.)

Editor's Note.—The act adding this section is effective Jan 1, 1966.

The 1967 amendment, effective July 1, 1967, deleted "and where there is no board of health, with the clerk of the superior court in the county in which the establishment is located" in subsection (d).

ARTICLE 14.

Cadavers for Medical Schools.

§ 90-213. **Autopsies unlawful without consent of Board.**—It is hereby declared unlawful to hold an autopsy on any dead human body subject to the provisions of this article without first having obtained the consent, in writing, of the chairman of the Board or of his accredited agent: Provided, that nothing in this article shall limit the coroner in the fulfillment of his duties: Provided, further, that nothing in §§ 90-211 through 90-216, inclusive, shall prevent a person from making testamentary disposition of his or her body after death. Provided, that nothing in this article shall restrict or limit the provisions of article 21 of the General Statutes, entitled "Chief Medical Examiner; Post-Mortem Medicolegal

Examinations. (1903, c. 666, s. 3; Rev., s. 4289; 1911, c. 1888; C. S., s. 6787; 1943, c. 100; 1955, c. 972, s. 5; 1967, c. 1154, s. 3.)

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, rewrote the last proviso, which formerly related to article 30 of chapter 130 and now relates to article 21 of that chapter of the General Statutes.

Article 15.

Autopsies.

§ 90-217. Limitation upon right to perform autopsy.—The right to perform an autopsy upon the dead body of a human being shall be limited to cases specially provided by statute or by direction or will of the deceased, and cases where the husband or wife or one of the next of kin or nearest known relative or other person charged by law with the duty of burial, in the order named and as known, shall authorize such examination or autopsy. (1931, c. 152; 1933, c. 209; 1967, c. 1154, s. 4.)

Cross References.—

As to post-mortem medicolegal examinations, see §§ 130-192 to 130-202.2.

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, deleted "cases where a coroner or the majority of a coroner's jury deem it necessary upon an inquest to have such an autopsy" near the middle of this section.

When Autopsy May Be Performed. — An autopsy may not legally be performed without the consent of the person having the duty to bury the body, unless authorized by statute. Parker v. Quinn-McGowen Co., 262 N.C. 560, 138 S.E.2d 214 (1964).

Purpose of Autopsy. — Except in the case of an inquest, the avowed purpose of an autopsy is to advance medical knowledge and thus alleviate suffering in the living. Parker v. Quinn-McGowen Co., 262 N.C. 560, 138 S.E.2d 214 (1964).

An autopsy is a violation of the body not intended to preserve it intact--quite the contrary—and is totally unrelated to its proper burial. Parker v. Quinn-McGowen Co., 262 N.C. 560, 138 S.E.2d 214 (1964).

And is Different from Unauthorized Embalming.—Although it has been said that an undertaker's unauthorized embalming of a body received for burial constitutes mutilation similar to that involved in an autopsy, there is a distinct difference in the two operations. Parker v. Quinn-McGowen Co., 262 N.C. 560, 138 S.E.2d 214 (1964).

Article 16.

Dental Hygiene Act.

§ 90-230. Discipline of dental hygienist.—The procedure for the revocation of a license or for other discipline of a holder of a certificate under this article shall be the same in form and manner as prescribed in chapter 150 of the General Statutes. (1945, c. 639, s. 10; 1967, c. 489, s. 1.)

Editor's Note.—The 1967 amendment substituted "chapter 150 of the General Statutes" for "§ 90-41" at the end of the section.

§ 90-231. Fees and disposition thereof. — The fees which shall be charged by the Board for the performance of the duties imposed upon it by this article shall be as follows:

(1) Examination fee, twenty dollars ($20.00);

(2) Issuance of annual renewal certificate, not to exceed twenty-five dollars ($25.00), which fee shall be annually fixed by the Board; and not later than November 30 of each year, the Board shall give notice of the amount of the renewal fee to each dental hygienist licensed to practice in the State of North Carolina;

(3) Restoration of license, twenty dollars ($20.00).

All fees shall be payable in advance to the Board and shall be disposed of by the

Board in the discharge of its duties under this article, with any surplus to be disposed of as provided in article 2 of this chapter. (1945, c. 639, s. 11; 1965, c. 163, s. 7; 1967, c. 489, s. 2.)

Editor's Note. — The 1965 amendment increased the fee in subdivision (2) from $2 to $5.

The 1967 amendment rewrote subdivision (2), which formerly read "Issuance of annual renewal certificate, five dollars ($5.00)."

ARTICLE 17.

Dispensing Opticians.

§ 90-243. Certified copy.—Upon the request of any person to whom a certificate has been issued the Board shall issue a certified copy thereof. The Board shall be entitled to a fee of one dollar ($1.00) for the issuance of a certified copy. (1951, c. 1089, s. 10; 1967, c. 691, s. 49.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, rewrote the section, which formerly provided also for recording certificates of registration. The present provisions of the section were formerly found in the fourth and fifth sentences of the section.

§ 90-248. Compensation and expenses of Board members and secretary.—Each member of the Board shall receive for his services for the time actually in attendance upon Board meetings the sum of ten ($10.00) dollars per day and shall be reimbursed for actual necessary expenses incurred in the discharge of such duties not to exceed five ($5.00) dollars per day for subsistence plus the actual traveling expenses or an allowance of five (5¢) cents per mile while such member uses his personally owned automobile. The compensation of the secretary shall be fixed by the Board in an amount not to exceed one thousand dollars ($1,000.00) per annum. (1951, c. 1089, s. 15; 1953, c. 894; 1965, c. 730.)

Editor's Note.—

The 1965 amendment substituted "one thousand dollars ($1,000.00) per annum" for "three hundred dollars (0300.00) per annum" at the end of this section.

ARTICLE 18A.

Practicing Psychologists.

§ 90-270.1. Title.—This article shall be known and may be cited as the "Practicing Psychologist Licensing Act." (1967, c. 910, s. 1.)

Editor's Note.—Section 23, c. 910, Session Laws 1967, provides that the act shall become effective July 1, 1967.

§ 90-270.2. Definitions.—(a) "Accredited education institution" means a college or university chartered by the State and accredited by the appropriate regional association of colleges and secondary schools.

(b) "Board" means the North Carolina State Board of Examiners of Practicing Psychologists.

(c) "Licensed practicing psychologist" means an individual to whom a license has been issued pursuant to the provisions of this article, and whose license is in force and not suspended or revoked.

(d) "Practice of psychology" within the meaning of this article is defined as rendering, or offering to render, professional psychological services to individuals, singly or in groups, whether in the general public or in organizations, either public or private, for a fee, monetary or otherwise.

(e) "Professional psychological services" means the application of psychological principles and procedures for the purposes of understanding, predicting, or influencing the behavior of individuals in order to assist in their attainment of

maximum personal growth; optimal work, family, school and interpersonal relationships; and healthy personal adjustment. The application of psychological principles and procedures includes some of all or the following, but is not restricted to: Interviewing, counseling, and psychotherapy; administering and interpreting instruments for the assessment and evaluation of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation; diagnosis, prevention, and amelioration of adjustment problems; hypnosis; the resolution of interpersonal and social conflict; educational and vocational counseling; personnel selection; and the evaluation and planning for effective work and learning situations. Teaching, writing, the giving of public speeches or lectures, and research concerned with psychological principles, or the application of psychological principles, are not included in professional psychological services within the meaning of this article.

(f) "Psychological examiner" is an individual, licensed within the meaning of this article, who offers to render, or renders professional psychological services such as interviewing or administering and interpreting tests of mental abilities, interests, aptitudes, and personality characteristics for such purposes as psychological evaluation, or for educational, vocational or personnel selection, guidance or placement. The psychological examiner does not engage in over-all personality appraisal or classification, personality counseling or personality readjustment techniques except under qualified supervision.

(g) "Psychotherapy" within the meaning of this article means the use of learning or other psychological behavioral modification methods in a professional relationship to assist a person or persons to modify feelings, attitudes, and behavior which are intellectually, socially, or emotionally maladjustive or ineffectual. (1967, c. 910, s. 2.)

§ 90-270.3. Practice of medicine and optometry not permitted.— Nothing in this article shall be construed as permitting licensed practicing psychologists or psychological examiners to engage in any manner in all or any of the parts of the practice of medicine or optometry licensed under article 1 and 6 of chapter 90 of the General Statutes, including, among others, the diagnosis and correction of visual and muscular anomalies of the human eyes and visual apparatus, eye exercises, orthoptics, vision training, visual training and developmental vision. A licensed practicing psychologist or psychological examiner shall assist his client in obtaining professional help for all aspects of his problems that fall outside the boundaries of his own competence, including provision for the diagnosis and treatment of relevant medical or optometric problems. In rendering psychotherapy in any form, the licensed practicing psychologist or psychological examiner shall develop liaison, communication, and meaningful collaboration with a physician, duly licensed to practice medicine in North Carolina, designated by the client. (1967, c. 910, s. 3.)

§ 90-270.4. Exemptions to this article. — (a) Nothing in this article shall be construed as limiting the activities, services, and use of official title on the part of any person in the regular employ of a federal, state, county, or municipal government, or other political subdivision, or any agency thereof, or of a duly accredited or chartered educational institution, insofar as such activities and services are a part of the duties and responsibilities of his position. Such duties and responsibilities may include, but are not restricted to, teaching, writing, conducting research, the giving of public speeches or lectures, the giving of legal testimony, consulting with publishers, serving on boards, commissions, and review committees of public and nonprofit private agencies, with or without remuneration.

(b) Nothing in this article shall be construed as limiting the activities, services, and use of title designating training status of a student, intern, or fellow preparing for the practice of psychology under qualified supervision in an accredited educa-

tional institution or service facility, provided that such activities and services constitute a part of his course of study.

(c) Nothing in this article shall be construed as limiting the activities and services of any persons who are salaried employees of federal, State, county, municipal or other political subdivisions, or any agencies thereof, or a duly chartered or accredited educational institution, or private business, provided such employees are performing those duties for which they are employed by such organizations, and within the confines of such organization, and provided that they or their organization are not engaged in the practice of psychology as defined in this article. In case the organization is a private business engaged in the practice of psychology as defined in this article, such salaried employees shall be supervised by a licensed psychologist or a psychological examiner.

(d) Nothing in this article shall be construed as restricting the use of the term "social psychologist" by any person who has been graduated with a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by an accredited educational institution, and who has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or has had equivalent specialized training in social psychology, and who has filed with the Board a statement of the facts demonstrating his compliance with the aforesaid conditions of this subsection.

(e) Nothing in this article shall be construed to limit or restrict physicians and surgeons or optometrists authorized to practice under the laws of North Carolina or to restrict qualified members of other professional groups in the practice of their respective professions, provided they do not hold themselves out to the public by any title or description stating or implying that they are practicing psychologists or psychological examiners, or are licensed to practice psychology.

(f) Nothing in this article is to be construed as prohibiting a psychologist who is not a resident of North Carolina from rendering professional psychological services in this State for not more than five days in any calendar year. (1967, c. 910, s. 4.)

§ 90-270.5. **Temporary licenses.**—(a) A nonresident psychologist who is either licensed or certified by a similar Board of another state, or territory of the United States, or of a foreign country or province whose standards, in the opinion of the Board, are, at the date of his certification or licensure, equivalent to or higher than the requirement of this article, may be issued a temporary license by the Board for the practice of psychology in this State for a period not to exceed 30 consecutive business days, or 45 business days in any 90-day period; provided that such a psychologist submits to the Board on a minimum of ten days' written notice evidence of certification or licensing, along with a report of the nature of his intended practice.

(b) A nonresident psychologist who meets all other requirements of § 90-270.11(a) or 90-270.11(b) for licensing, and is not licensed or certified in his place of residence, may be issued a temporary license by the Board for the practice of psychology in this State for the same period and under the same conditions as in § 90-270.5(a) above, except that summary of his qualifications in lieu of evidence of certification or licensing must be submitted to the Board for its appraisal.

(c) A psychologist who comes to reside in North Carolina, and who is otherwise qualified for licensing may be issued a temporary license by the Board at the appropriate level for the practice of psychology until such time as the Board conducts its regular licensing examinations.

(d) A psychologist who meets all other requirements of § 90-270.11(a) for licensing, except the two years of acceptable and appropriate experience, may be issued a temporary license by the Board for the practice of psychology for a period not exceeding two years, provided he practices under the supervision of a licensed

practicing psychologist or a psychologist acceptable to the Board as an eligible supervisor.

(e) Fees for temporary licenses shall be as prescribed by the Board. (1967, c. 910, s. 5.)

§ 90-270.6. Board of Examiners in Psychology; appointment; term of office; composition.— For the purpose of carrying out the provisions of this article, there is hereby created a North Carolina State Board of Examiners of Practicing Psychologists, which shall consist of five members to be appointed by the Governor. At all times the Board shall be composed of at least two members primarily engaged in graduate teaching or research in psychology and at least two members primarily engaged in rendering services in psychology. At all times three members shall be licensed practicing psychologists or qualified for licensure under this article. Due consideration shall also be given to the adequate representation of the various fields of psychology. Terms of office shall be three years, and of the first Board one member shall be appointed to serve for one year, two members for two years, and two members for three years. Within 30 days after July 1, 1967, the executive committee of the North Carolina Psychological Association shall, with the advice of the chairman of the graduate departments of psychology in this State, submit to the Governor a list of the names of 10 persons who are eligible for licensing as practicing psychologists under this article, giving due regard to the required composition of the Board, and from which the Governor will select the Board within 30 days. The five psychologists appointed to the first Board shall be deemed to be and shall become licensed practicing psychologists immediately upon their appointment and qualification as members of the Board. All terms of service on the Board expire June 30 in appropriate years. As the term of a member expires, or as a vacancy occurs for any other reason, the North Carolina Psychological Association, or its successor, shall, with the advice of the chairmen of the graduate departments of psychology in the State, for each vacancy, submit to the Governor a list of the names of three eligible persons, and from this list the Governor shall make the appointment for a full term, or for the remainder of the unexpired term, if any. Each Board member shall serve until his successor has been appointed. (1967, c. 910, s. 6.)

§ 90-270.7. Qualifications of Board members.—Each member of the Board shall have the following qualifications:

(1) Be a resident of this State and a citizen of the United States;

(2) He shall hold the doctoral degree in psychology, or in a closely allied field, either of which qualifies him for membership in the North Carolina Psychological Association and the American Psychological Association;

(3) Be at the time of his appointment, and shall have been for at least five years prior thereto, actively engaged as a psychologist in one or more branches of psychology or in the education and training of doctoral or postdoctoral students of psychology or in psychological research, and such activity during the two years preceding appointment shall have occurred primarily in this State. (1967, c. 910, s. 7.)

§ 90-270.8. Compensation of members; expenses; employees.— Members of the Board shall receive no compensation for their services, but shall receive their necessary expenses incurred in the performance of duties required by this article, as prescribed for State boards generally. The Board may employ necessary personnel for the performance of its functions, and fix the compensation therefor, within the limits of funds available to the Board; however, the Board shall not employ any of its own members to perform inspectional or similar ministerial tasks for the Board. In no event shall the State of North Carolina be liable for expenses incurred by the Board in excess of the income derived from this article. (1967, c. 910, s. 8.)

§ 90-270.9. Election of officers; meetings; adoption of seal and appropriate rules.—The Board shall annually elect a chairman and vice-chairman from among its membership. The Board shall meet annually, at a regular time set by the Board, in the city of Raleigh, and it may hold additional meetings and conduct business at any place in the State. Three members of the Board shall constitute a quorum. The Board may empower any member to conduct any proceeding, hearing or investigation necessary to its purposes, but any final action requires a quorum of the Board. The Board shall adopt an official seal, which shall be affixed to all licenses issued by it. The Board shall make such rules and regulations not inconsistent with law, as may be necessary to regulate its proceedings and otherwise to implement the provisions of this article. (1967, c. 910, s. 9.)

§ 90-270.10. Annual report.—On June 30 of each year, beginning with the year 1968, the Board shall submit a report to the Governor of the Board's activities since the preceding July 1, including the names of all practicing psychologists and psychological examiners to whom licenses have been granted under this article, any cases heard and decisions rendered in matters before the Board, the recommendations of the Board as to future actions and policies, and a financial report. Each member of the Board shall review and sign the report before its submission to the Governor. Any Board member shall have the right to record a dissenting view. (1967, c. 910, s. 10.)

§ 90-270.11. Licensing and examination.—(a) Practicing Psychologist.—

(1) The Board shall issue a license to practice psychology to any applicant who pays a fee of twenty-five dollars ($25.00), who passes a satisfactory examination in psychology, and who submits evidence verified by oath and satisfactory to the Board that he:

a. Is at least twenty-one years of age;

b. Is of good moral character;

c. Has received his doctoral degree based on a program of studies the content of which was primarily psychological from an accredited educational institution; and subsequent to receiving his doctoral degree has had at least two years of acceptable and appropriate professional experience as a psychologist;

d. Has not within the preceding six months failed an examination given by the Board.

(b) Psychological Examiner.—

(1) The Board shall issue a license to practice psychology to any applicant who pays a fee of twenty-five dollars ($25.00), who passes a satisfactory examination in psychology, and who submits evidence verified by oath and satisfactory to the Board that he:

a. Is at least twenty-one years of age;

b. Is of good moral character;

c. Has received a master's degree based on two academic years of graduate training in psychology from an accredited educational institution, or in lieu thereof, such training and experience as the Board shall consider equivalent thereof;

d. Has not within the preceding six months failed an examination given by the Board.

(c) Examinations.—The examinations required by subsections (a) and (b) of this section shall be of a form and content prescribed by the Board, and may be oral, written, or both. The examinations shall be administered annually, or more frequently as the Board may prescribe, at a time and place to be determined by the Board. (1967, c. 910, s. 11.)

§ 90-270.12. Waiver of requirements.—(a) Prior to July 1, 1969, the Board shall waive the examination and doctoral degree required in § 90-270.11 (a) for any person applying for licensing as a practicing psychologist, and shall waive the examination required in § 90-270.11 (b) for any person applying for licensing as a psychological examiner, provided the applicant meets all other requirements of the appropriate subsection of § 90-270.11, is qualified by education and experience judged by the Board to be acceptable for the practice of psychology, and has been engaged in such activity for at least five years prior to July 1, 1969. Qualifying experience may have been accumulated in the teaching of psychology at an accredited educational institution, or in psychological research, or in the administration of a program of psychological services.

(b) The Board shall waive the requirement of the doctoral degree required by § 90-270.11 (a), provided that the applicant for practicing psychologist shows evidence, satisfactory to the Board, that he has had a combination of graduate work, training and experience indicated in § 90-270.11 (a). (1967, c. 910, s. 12.)

§ 90-270.13. Licensing of psychologist licensed or certified in other states; licensing of diplomates of American Board of Examiners in Professional Psychology.—(a) The Board may grant a license without examination to any person meeting the other requirements of either § 90-270.11 (a) or 90-270.11 (b) and who at the time of application is licensed or certified as a psychologist by a similar board of another state, territory or district whose standards, in the opinion of the Board, are not lower than those required by this article. The provisions of this section shall apply only when such states, territories, or districts grant similar privilege to residents of this State.

(b) The Board may grant a license without examination to any person who has been granted a diploma by the American Board of Examiners in Professional Psychology. (1967, c. 910, s. 13.)

§ 90-270.14. Renewal of licenses.—A license issued under this article must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee of five dollars ($5.00). If a license is not renewed on or before the first of January of each year, an additional fee of two dollars ($2.00) shall be charged for late renewal. (1967, c. 910, s. 14.)

§ 90-270.15. Refusal, suspension, or revocation of licenses.—(a) A license applied for, or issued under this article may be refused or revoked by the Board upon proof that the person to whom the license was issued:

(1) Has been convicted of a felony; or

(2) Has been guilty of fraud or deceit in securing the license or any renewal thereof; or

(3) Is an habitual drunkard or is addicted to the use of deleterious habit-forming drugs; or

(4) Has been guilty of unprofessional conduct as defined by the then-current code of ethics published by the American Psychological Association.

(b) A license issued under this article shall be suspended by the Board after failure to renew a license for a period of more than six months after the annual renewal date.

(c) The procedure for revocation, suspension, or refusal of a license shall be in accordance with the provisions of chapter 150 of the General Statutes.

(d) A person whose license has been refused or revoked under the terms of this section may reapply to the Board for licensure after the passage of one calendar year from the date of such revocation. The Board may reinstate a suspended license upon payment of a special fee of fifteen dollars ($15.00), and may require reexamination for reinstatement. (1967, c. 910, s. 15.)

§ 90-270.16. Prohibited acts.—(a) After June 30, 1968, no person shall represent himself to be a practicing psychologist, or psychological examiner, or

engage in, or offer to engage in, the practice of psychology without a valid license issued under this article.

(b) After June 30, 1968, no person who is not licensed under this article shall represent himself to be a licensed practicing psychologist or psychological examiner; nor shall he use a title or description, including the term "psychology," any of its derivatives, such as "psychologic," "psychological," or "psychologist," or modifiers such as "practicing" or "certified," in such a manner which would imply that he is licensed under this article; nor shall he practice, or offer to practice, psychology as defined in this article, except as otherwise permitted herein. The use by a person who is not licensed under this article of such terms, whether in titles or descriptions or otherwise, is not prohibited by this article except when used in connection with the practice of psychology as defined in this article; such use of these terms by a person not licensed under this article shall not be construed as implying that a person is licensed under this article or as practicing or offering to practice psychology. (1967, c. 910, s. 16.)

§ 90-270.17. **Violations and penalties.**—Any person who violates § 90-270.16 is guilty of a misdemeanor and upon conviction shall be punishable by a fine of not more than five hundred dollars ($500.00), or imprisonment for not more than six months, or both fine and imprisonment. Each violation shall constitute a separate offense. (1967, c. 910, s. 17.)

§ 90-270.18. **Disposition of fees.**—All fees derived from the operation of this article shall be deposited with the State Treasurer to the credit of a revolving fund for the use of the Board in carrying out its functions. The financial records of the Board shall be subjected to an annual audit, supervised by the State Auditor, and paid for out of the funds of the Board. (1967, c. 910, s. 19.)

Article 19.

Sterilization Operations.

§ 90-271. **Operations lawful; consent required for operation on married person or person over twenty-one.** — It shall be lawful for any physician or surgeon licensed by this State and acting in collaboration or consultation with at least one or more physicians or surgeons so licensed, when so requested by any person twenty-one years of age or over, or less than twenty-one years of age if legally married, to perform upon such person a surgical interruption of vas deferens or fallopian tubes, as the case may be, provided a request in writing is made by such person at least thirty (30) days prior to the performance of such surgical operation, and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician or surgeon to such person as to the meaning and consequences of such operation; and provided, further, that a request in writing is also made at least thirty (30) days prior to the performance of the operation by the spouse of such person, if there be one, unless the spouse has been declared mentally incompetent, or unless a separation agreement has been entered into between the spouse and the person to be operated upon, or unless the spouse and the person to be operated upon have been divorced from bed and board or have been divorced absolutely, or, in the case of a wife to be operated upon, unless she shall furnish an affidavit that her husband has abandoned her and failed to contribute to her support for at least the preceding six months; and provided, further, that the surgical interruption of fallopian tubes is performed in a hospital licensed by the Medical Care Commission. (1963, c. 600; 1965, cc. 108, 941.)

Editor's Note. — The first 1965 amendment added near the end of the section all of the language between "divorced absolutely" and the last semicolon.

The second 1965 amendment deleted "in a hospital licensed by the Medical Care Commission" preceding "upon such person" near the beginning of this section, and added the last proviso.

Chapter 91.

Pawnbrokers.

§ 91-1. Pawnbroker defined.

Cross Reference.—As to effect of secured transaction provisions of Uniform Commercial Code, see § 25-9-201.

§ 91-2. License; business confined to municipalities.

Local Modification.—Onslow: 1967, c. 768, amending 1957, c. 1155.

§ 91-3. Municipal authorities to grant and control license; bond.

Local Modification.—Onslow: 1967, c. 768, amending 1957, c. 1155.

§ 91-5. Pawn ticket. — And every such pawnbroker shall at the time of each loan deliver to the person pawning or pledging any goods, articles, or things a ticket or memorandum or note signed by him containing the substance of the entry required to be made by him in his book as aforesaid, and a copy of the said ticket, memorandum, or note so given to the person pawning or pledging any goods, articles, or things of value, shall be filed within forty-eight hours in the office of the sheriff of the county and chief of police of the city or town issuing the license to such pawnbroker. The said tickets or memorandums so issued shall be numbered consecutively and dated the day issued. (1951, c. 198, s. 3; C. S., s. 7004; 1965, c. 84.)

Local Modification.—Onslow: 1967, c. 768, amending 1957, c. 1155.

Editor's Note. — The 1965 amendment, effective July 1, 1965, inserted "sheriff of the county and" preceding "chief of police."

Chapter 93A.

Real Estate Brokers and Salesmen.

§ 93A-1. License required of real estate brokers and real estate salesmen.

Constitutionality.—

This chapter was declared constitutional in State v. Warren, 252 N.C. 690, 114 S.E.2d 660 (1960). McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

The purpose of this chapter is to protect sellers, purchasers, lessors and lessees of real property from fraudulent or incompetent brokers and salesmen. McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

Chapter Must Be Strictly Construed.— Because this is a statute restricting to a special class of persons the right to engage in a lawful occupation, this chapter must be strictly construed so as not to extend it to activities and transactions not intended by the legislature to be included.

McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

This chapter must be construed with a regard to the evil which it is intended to suppress. McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

Any violation of its provisions is declared to be a criminal offense. McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

Stated in Carver v. Lykes, 262 N.C. 345, 137 S.E.2d 139 (1964).

§ 93A-2. Definitions and exceptions.

(b) The term real estate salesman within the meaning of this chapter shall mean and include any person who under the supervision of a real estate broker, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.

(1967, c. 281, s. 1.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, inserted "under the supervision of a real estate broker" in subsection (b).

As subsections (a) and (c) were not changed by the amendment, they are not set out.

This chapter does not apply to a sale by an owner of his own note secured by a deed of trust upon his property. McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965), citing In re Dillingham, 257 N.C. 684, 127 S.E.2d 584 (1962).

Person Who Purchases or Leases Land for His Own Account. — Although this chapter does not expressly exempt from its provisions one who purchases or leases land for his own account, it defines "real estate broker" as a person who does these specified acts "for others." McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

The legislature did not intend for this chapter to apply to a person, partnership or association who purchases land for his or its own account, even though such purchase is for resale. McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

This chapter does not forbid a licensed real estate broker to embark with an unlicensed person upon a joint venture in which all of the unlicensed party's activities will be such as are not within the contemplation of this chapter, nor does this chapter forbid them to agree that they will share all of the receipts from the activities of both of them. Such a contract, when enforced as made, does not violate the policy declared by the legislature in this chapter. McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

A contract by one who is not a licensed real estate broker or salesman with another person to buy land, or an option thereon, for their own account and, thereafter, to resell such land, or option, and divide the profits would not be a contract to do an act prohibited by this chapter. McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

§ 93A-3. Licensing Board created; compensation; organization.— (a) There is hereby created the North Carolina Real Estate Licensing Board for issuing licenses to real estate brokers and real estate salesmen, hereinafter called the Board. The Board shall be composed of five (5) members to be appointed by the Governor: Provided, that two (2) members of said Board shall be a licensed real estate broker or salesman. One member shall be appointed for one year, two for two years and two for three years. Members appointed on the expiration of such term of office shall serve for three years. The members of the Board shall elect one of their members to serve as chairman of the Board. The Governor may remove any member of the Board for misconduct, incompetency, or wilful neglect of duty. The Governor shall have the power to fill all vacancies occurring on said Board.

(b) Members of the Board shall each receive as full compensation for each day accordingly spent on work for the Board, the sum of fifteen dollars ($15.00) per day plus ten dollars ($10.00) per day for subsistence plus travel expense. The total expense of the administration of this chapter shall not exceed the total income therefrom; and none of the expenses of said Board or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of

the treasury of the State of North Carolina; and neither the Board nor any office or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Board may set aside an expense reserve each year not to exceed ten percent (10%) of the previous year's gross income; then any surplus shall go to the general fund of the State of North Carolina.

(1967, c. 281, s. 2; c. 853, s. 1.)

Editor's Note. — The first 1967 amendment, effective July 1, 1967, deleted, at the end of the first sentence of subsection (b), "such per diem allowance for the whole Board not to exceed an aggregate amount of twenty-five hundred dollars ($2500.00) for any fiscal year."

The second 1967 amendment, effective July 1, 1967, deleted "only" preceding "two" in the proviso to the second sentence of subsection (a).

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

§ 93A-4. Applications for licenses; fees; qualifications; examinations; bond; privilege licenses; renewal or reinstatement of license; power to enforce provisions.—(a) Any person, partnership, association, or corporation hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesman shall make written application for such license to the Board on such forms as are prescribed by the Board. Each applicant for a license as a real estate broker shall be a citizen of the United States and shall be at least 21 years of age. Each applicant for a license as a real estate broker shall have been actively engaged as a licensed real estate salesman in this State for at least six months prior to making application for a license as a real estate broker, or shall furnish evidence satisfactory to the Board of experience in real estate transactions or the completion of a study or a combination of experience and study of real estate transactions which the Board shall find equivalent to such six months experience as a licensed real estate salesman. Each application for a license as real estate broker shall be accompanied by twenty-five dollars ($25.00). Each application for license as a real estate salesman shall be accompanied by fifteen dollars ($15.00), and shall state the name and address of the real estate broker with whom the applicant is to be associated.

(c) All licenses granted and issued by the Board under the provisions of this chapter shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such license may be effected at any time during the months of May or June preceding the date of expiration of such license upon proper application to the Board accompanied by the payment of a renewal fee of ten dollars ($10.00) to the secretary-treasurer of the Board. All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars ($5.00) in addition to the required renewal fee. In the event a licensee fails to obtain a reinstatement of such license within twelve months after the expiration date thereof, the Board may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Board upon payment of a fee of one dollar ($1.00) by the licensee.

(1967, c. 281, s. 3; c. 853, s. 2.)

Editor's Note.—The first 1967 amendment, effective July 1, 1967, substituted "reinstated" for "renewed" at the end of the first sentence of subsection (c) and inserted the third and fourth sentences of subsection (c).

The second 1967 amendment, effective July 1, 1967, inserted the second and third sentences of subsection (a).

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

§ 93A-6. Revocation or suspension of licenses by Board.—(a) The Board shall have power to revoke or suspend licenses as herein provided. The

Board may upon its own motion, and shall upon the verified complaint in writing of any persons, provided such complaint with the evidence, documentary or otherwise, presented in connection therewith, shall make out a prima facie case, hold a hearing as hereinafter provided and investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity, and shall have power to suspend or revoke any license issued under the provisions of this chapter at any time where the licensee has by false or fraudulent representations obtained a license or has been convicted or has entered a plea of nolo contendere upon which a finding of guilty and final judgment has been entered in a court of competent jurisdiction in this State or in any other state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense or offenses involving moral turpitude or where the licensee in performing or attempting to perform any of the acts mentioned herein is deemed to be guilty of:

(1) Making any substantial and willful misrepresentations, or

(2) Making any false promises of a character likely to influence, persuade, or induce, or

(3) Pursuing a course of misrepresentation or making of false promises through agents or salesmen or advertising or otherwise, or

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts, or

(5) Accepting a commission or valuable consideration as a real estate salesman for the performances of any of the acts specified in this chapter, from any person, except the licensed broker by whom he is employed, or

(6) Representing or attempting to represent a real estate broker other than the broker by whom he is engaged or associated, without the express knowledge and consent of the broker with whom he is associated, or

(7) Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others, or

(8) Being unworthy or incompetent to act as a real estate broker or salesman in such manner as to safeguard the interests of the public, or

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this chapter, or

(10) Any other conduct whether of the same or a different character from that hereinbefore specified which constitutes improper, fraudulent or dishonest dealing.

(11) For performing or undertaking to perform any legal service as set forth in G.S. 84-2.1 or any other such acts not specifically set forth in said section.

(12) Commingling the money or other property of his principals with his own or failure to maintain and deposit in a trust or escrow account in an insured bank all money received by a real estate broker acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction;

(13) Failure to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller;

(14) Failure by a broker to deliver to the seller in every real estate transaction wherein he acts as a real estate broker, at the time such transaction is consummated, a complete detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same were disbursed.

(b) In all proceedings under this section for the revocation or suspension of licenses, the provisions of chapter 150 of the General Statutes shall be applicable. (1957, c. 744, s. 6; 1967, c. 281, s. 4; c. 853, s. 3.)

Editor's Note.—The first 1967 amendment, effective July 1, 1967, added subdivisions (12), (13) and (14) of subsection (a) and rewrote subsection (b).

The second 1967 amendment, effective July 1, 1967, inserted, in the opening paragraph of subsection (a), the provisions as to conviction of or plea of nolo contendere to criminal offenses.

This chapter is not concerned with a licensed broker's sharing of his commissions with an unlicensed associate, unless the reason for such sharing is the performance by the unlicensed associate of acts which violate the chapter. McArver v. Gerukos, 265 N.C. 413, 144 S.E.2d 277 (1965).

A real estate broker may maintain an action for malicious prosecution against a person who maliciously and without probable cause institutes proceedings before the Real Estate Licensing Board terminated in favor of the broker, charging conduct constituting ground for revocation or suspension of the broker's license Carver v. Lykes, 262 N.C. 345, 137 S.E.2d 139 (1964).

§ 93A-9. Licensing nonresidents. — A nonresident may become a real estate broker or real estate salesman by conforming to all of the provisions of this chapter. Any nonresident real estate broker or real estate salesman regularly engaged in the real estate business as a vocation maintaining a definite place of business in another state, and who has been licensed as a real estate salesman or broker in such state, shall, by reason of such foreign license and upon payment of the license fee fixed by this chapter, be authorized to transact the business of a real estate broker or real estate salesman in this State during the period for which his original license shall be in force: Provided, however, the provisions of this sentence shall only be applicable with respect to states which grant to licensed brokers or salesmen of this State the right to transact the business of a real estate broker or salesman in such state without being required to pass any examination. (1957, c. 744, s. 9; 1967, c. 281, s. 5.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, deleted "which offers the same privileges to licensed brokers or salesmen of this State" following "such state" near the middle of the second sentence and added the proviso at the end of the section.

Chapter 93B.

Occupational Licensing Boards.

§ 93B-4. Annual audit of books and records; payment of cost; report of financial operations.—The books and records of each occupational licensing board shall be audited annually by the State Auditor, or under his direction and supervision by a person approved by him, or by an independent certified public accountant who shall certify the results of the audit to the State Auditor, and include such information as the State Auditor may direct. The cost of all audits shall be paid out of the funds of the board. The State Auditor shall issue annually a report containing a summary of the financial operations of each board. Whenever such annual audit is made by any person, firm or corporation other than the State Auditor, a verbatim copy thereof shall be made a part of the annual report required in § 93B-2. (1957, c. 1377, s. 4; 1965, c. 661.)

Editor's Note. The 1965 amendment added the last sentence.

Chapter 93C.

Watchmakers.

§ 93C-1. Purpose of chapter; unlawful acts.—This chapter is designed and intended to protect the public against abuses, misrepresentation, false advertising and incompetency in the business of watchmaking and watch repairing. From and after January 1, 1968, it shall be unlawful:

(1) To engage in the business of repairing, replacing, rebuilding, reconditioning, cleaning and adjusting the mechanical parts of watches and the manufacturing and fitting of parts designed for use or used inside watches and other time recording instruments without being a watchmaker registered pursuant to the provisions of this chapter by the board of examiners as hereinafter established.

(2) To act or attempt to act as a watchmaking apprentice without being registered as an apprentice by the board of examiners.

(3) For any person, partnership, firm, or corporation to operate a watchmaking or watch repairing business unless it is at all times operating under the supervision of a registered watchmaker; provided, however, that those who are engaged in the sale of watches shall be deemed to have complied with this chapter in the event they receive watches for repairs and that the repairs are made under the general supervision of a registered watchmaker, and those engaged in the sale of watches shall be deemed in compliance with this chapter when they return watches to the factory for adjustment, exchange or repairs, that nothing herein contained shall be construed to mean the manufacturing of watches and parts, clocks and parts, in a regularly constituted watch or clock factory or to an out-of-state firm, company, or corporation specializing in the repair of watches which has been designated and determined as such by the board of examiners, and shall not include the manufacturing or repairing of watch or clock cases, but shall include the repairing of all winding mechanisms whether they are parts of such cases or not; provided, further, that this chapter shall not apply to those engaged in repairing, remaking, refinishing, swapping, selling, purchasing, or reselling used watches and clocks. (1967, c. 937, s. 1.)

§ 93C-2. North Carolina State Board of Examiners in Watchmaking and Repairing.—There is hereby created a board of examiners, consisting of five members, to be appointed by the Governor within 60 days after July 1, 1967, which shall be known as the "North Carolina State Board of Examiners in Watchmaking and Repairing." Each member of the Board shall be a practical watchmaker who has followed such occupation in this State for at least two years immediately prior to his appointment. The terms of the first Board shall be as follows: One for the term of one year; one for the term of two years; one for

the term of three years; two for the term of four years; and thereafter all appointments shall be for a term of four years. Members of the Board shall hold office until their successors are appointed and qualified; provided, however, the Governor may remove any member of the Board for misconduct, incompetency or willful neglect of duty. The Governor shall have power to fill all vacancies occurring on said Board. (1967, c. 937, s. 2.)

§ 93C-3. **Officers, quarters, meetings, records, etc.**—The Board shall organize by electing a president from its members and appointing a secretary who may be from its members who shall hold their respective offices for one year, subject to reelection or reappointment, or until their successors are elected or appointed, and keep a record of its proceedings, a register of persons registered as watchmakers and apprentices showing the name, place of business and residence of each and the date and number of his certificate, and a record of all licenses issued, refused, renewed, suspended or revoked. Its records shall be open to public inspection at all reasonable times. The Board shall meet at least semiannually for the transaction of its necessary business and shall annually, on or before the first day of July of each year, make a report to the Governor of its official acts during the preceding year, and of its receipts and disbursements, and such recommendations as it may deem expedient. The Board may retain legal counsel, if it deems it necessary, and a recognized administration or technical expert, if it deems necessary. (1967, c. 937, s. 3.)

§ 93C-4. **Secretary's bond.**—Before entering upon the discharge of the duties of his office, the secretary shall give a bond to the Board, to be approved by the Board, in the sum of five thousand dollars ($5,000.00) conditioned upon the faithful performance of the duties of his office. (1967, c. 937, s. 4.)

§ 93C-5. **Receipts and their disposition.**—All moneys received by the Board under this chapter shall be paid to the secretary of the Board, who shall give a proper receipt for the same and shall deposit the same in a depository designated by the Board. No expenditures of funds of the Board shall be made except pursuant to the direction of, or pursuant to the rules and regulations of, the Board, with respect thereto. Neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. (1967, c. 937, s. 5.)

§ 93C-6. **Compensation.**—Each member of the Board shall receive fifteen dollars ($15.00) for each day actually engaged in the discharge of his official duties plus ten dollars ($10.00) per day for subsistence and ten cents (10¢) per mile while traveling to and from any regular or called meeting of the Board. The Board shall have authority to employ such clerks, assistants and not more than two investigators as it may deem necessary for the proper execution of its functions and to fix their salaries and expenses; such investigators, if employed in the discretion of the Board, shall be licensed watchmakers actively engaged as watchmakers for at least two years prior thereto. (1967, c. 937, s. 6.)

§ 93C-7. **Promulgation of regulations.**—The Board shall have authority to make such reasonable rules and regulations as may be deemed necessary or desirable to carry out the provisions of this chapter and which are not inconsistent therewith; provided, however, that such rules and regulations shall not be adopted until after a public hearing, for which hearing adequate notice has been given. Any investigator of the Board shall have authority to enter upon and to inspect any place of business conducted as a watch repair business at any time during business hours; provided, however, that no such inspection may be had without there first being a written complaint directed to the Board wherein complaint is made of the operations or practices of the enterprise to be inspected or investigated. A copy

of the rules and regulations as adopted by the Board shall be furnished by the Board to the owner or manager of each such place of business and to the general public upon request, provided, further, all appeals from the decisions of the Board shall be as provided in article 33 of chapter 143 of the General Statutes. (1967, c. 937, s. 7.)

§ **93C-8. Apprentice qualifications; license.**—Any person 16 years of age or over of good moral character indentured to a registered watchmaker in accordance with the terms of this chapter may engage in watchmaking, subject to the provisions of this chapter, upon obtaining from the Board license as an apprentice watchmaker, which license shall be conspicuously displayed at all times in the place of employment of the licensee. (1967, c. 937, s. 8.)

§ **93C-9. Applications for license.**—Any person who desires to practice watchmaking or to practice as an apprentice watchmaker shall file with the secretary of the Board of Examiners a written application, on a form approved by the Board, under oath, that the applicant is at least 18 years of age, or if an apprentice, at least 16 years of age. (1967, c. 937, s. 9.)

§ **93C-10. Examinations.**—The Board shall conduct examinations for applicants for license to practice as watchmakers at least two times a year at such times and places as the Board may determine. Such examination shall determine the applicant's qualifications with regard to such knowledge, practical ability and skill as is essential in the proper repairing of watches, and shall include an examination of theoretical knowledge of watch construction and repair, and also a practical demonstration of the applicant's skill in the manipulation of necessary watchmaker's tools. Such examination shall be written or oral, or both, as the Board may determine. License of watchmakers shall be issued by the Board to any applicant who shall pass a satisfactory examination in the opinion of said Board and shall possess the other qualifications required by law. (1967, c. 937, s. 10.)

§ **93C-11. License without examination.**—Any resident of this State who has been engaged in the practice of watchmaking and watch repairing at one or more established places of business in this State or any state, or who at any time or times prior to July 1, 1967, engaged in such practice for a total period of one year, shall be granted a license as a registered watchmaker without examination provided that such application is made prior to January 1, 1969, and is accompanied by a fee of ten dollars ($10.00). Any person who, prior to July 1, 1967, was practicing as an apprentice watchmaker under the tutorship of a practicing watchmaker in this State for a period of at least six months or who shall hereafter become apprenticed to a registered watchmaker under the provisions of this chapter, shall be granted a license to practice as an apprentice by making application to the Board and paying the required fee of fifteen dollars ($15.00). (1967, c. 937, s. 11.)

§ **93C-12. Display of license.**—Every holder of a license shall display it in a conspicuous place in the place of business where he is so engaged or employed. (1967, c. 937, s. 12.)

§ **93C-13. Fees.**—The State Board of Watchmaker Examiners shall charge and collect the following fees: For the examination of an applicant for a license to practice as a watchmaker, twenty-five dollars ($25.00); for the original registration of an applicant for a license to practice as a watchmaker who is eligible by the provisions of this chapter for such license without an examination, ten dollars ($10.00), for which amount the applicant shall also be given his or her respective license without additional cost other than the original registration fee, for that year in which such original registration was made; for renewal of the license as a watchmaker, ten dollars ($10.00); for restoration of an expired license, ten dollars ($10.00); for the filing of an apprentice license, ten dollars ($10.00); for a

license to practice as an apprentice, five dollars ($5.00); for a renewal of a license to practice as an apprentice, five dollars ($5.00).

A duplicate license will be issued upon the filing of a statement covering the loss of a license verified by the oath of the applicant, and the payment of five dollars ($5.00) for the issuance of same. Each duplicate license shall have the word "duplicate" stamped across the face thereof, and will bear the same number as the license that it was issued in lieu of. All such licenses shall expire as of December 31 of each calendar year. Upon the failure of any applicant to satisfactorily pass the examination for a license, he shall be privileged to take a subsequent examination at any other examination period upon the payment of seven dollars and fifty cents ($7.50). All those applicants satisfactorily passing the examination for a license shall be given their respective license without additional cost other than the examination fee, for that year in which such examination was satisfactorily passed. (1967, c. 937, s. 13.)

§ 93C-14. Refusal to issue; revocation or suspension of license; grounds.—The Board may refuse to issue, and is empowered to revoke or suspend, any license if the applicant or holder shall:

(1) Have been convicted of a felony or misdemeanor involving moral turpitude within five years of the date of application for license.
(2) Have engaged in any unethical practice or conduct, as defined by the Board, which shall include and mean any conduct of a character likely to mislead, deceive or defraud the public.
(3) Have made any false statement in any document required or permitted to be filed with the Board by this chapter and the regulations promulgated hereunder.
(4) Have advertised in any manner in which untruthful or misleading statements are made.
(5) Have performed any service in pursuance to any such advertising.
(6) Have transferred or loaned a certificate of registration to any person.
(7) Fails to display the certificate of registration conspicuously in the place of business at all times.
(8) Employ directly or indirectly any unregistered watchmaker or apprentice to perform any watchmaking or repairing.
(9) Not comply within 30 days with any order, rule, or regulation of the State Board created under this chapter.

Either causes (1) or (9) shall, on proof to the Board, be sufficient ground for revocation, suspension, or denial of a certificate of registration. As to each of the other several causes for action by the Board enumerated above, on the first offense the registrant or applicant shall be admonished, but on any subsequent offense the Board shall have power to act as in the cases of causes (1) and (9). In no case shall there be any disciplinary action taken by the Board without first having before it written charges and having delivered or mailed by registered mail to the person charged a true copy of the charges preferred, and having given the person charged an opportunity to be heard in his defense. (1967, c. 937, s. 14.)

§ 93C-15. Terms defined.—The words watch, watchmaking, watchmaker, watch repairer and watch repairing shall mean and include clock, clockmaking, clockmaker, clock repairer and clock repairing. The words watchmaker and watchmaking are used synonymously with and shall include and mean watch repairer and watch repairing for the purpose of this chapter. (1967, c. 937, s. 15.)

§ 93C-16. Enforcement of chapter; injunction.—The State Board of Examiners in watch repairing, or any resident of any county where any person or persons, firm or corporation shall hold himself or itself out as a watchmaker or repairer, or who advertises as being in the business of watchmaking or repairing without at all times operating such business under the supervision of a registered

watchmaker, or who holds himself or itself out as a qualified watchmaker or repairer without having a license so to do, may, in accordance with the laws of the State of North Carolina, governing injunctions, maintain an action in the name of the State of North Carolina to enjoin such person or persons, firm or corporation from engaging in the business of watchmaking or watch repairing, or from advertising himself or itself as such, as herein defined, until a license has been secured. Any person who has been so enjoined who shall violate such injunction shall be punished as for contempt of court; provided, that such injunction shall not relieve such person or persons, firm or corporation so engaging in watchmaking or watch repairing contrary to the provisions of this chapter from a criminal prosecution therefor as provided for herein, but such remedy by injunction shall be in addition to any other remedy providing for the criminal prosecution of such offender. (1967, c. 937, s. 16.)

§ 93C-17. Watchmakers of other states; recognition.—The Board may recognize licenses issued to watchmakers by state boards of watchmakers of other states, and upon presentation of such licenses may issue to the lawful holders thereof the watchmaker's license herein provided upon the payment of a license fee of twenty-five dollars ($25.00) for the first year. (1967, c. 937, s. 17.)

§ 93C-18. Penalty.—Anyone not having a valid license who holds himself out as a watchmaker or repairer, or who advertises as being in the business of watchmaking or repairing or who operates a business of watchmaking or repairing without operating such business under the supervision and management of a registered watchmaker or who holds himself out as qualified to do watchmaking or repairing, or anyone who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00), or by imprisonment for not less than one month nor more than six months, or by both such fine and imprisonment. (1967, c. 937, s. 18.)

Chapter 95.

Department of Labor and Labor Regulations.

ARTICLE 1.

Department of Labor.

§ 95-2. Election of Commissioner; term; salary; vacancy. — The Commissioner of Labor shall be elected by the people in the same manner as is provided for the election of the Secretary of State. His term of office shall be four years, and he shall receive a salary of twenty thousand dollars ($20,000.00) per annum, payable in equal monthly installments. Any vacancy in the office shall be filled by the Governor, until the next general election. The office of the Department of Labor shall be kept in the city of Raleigh and shall be provided for as are other public offices of the State. (Rev., ss. 3909, 3910; 1919, c. 314, s. 4; C. S., s. 7310; 1931, c. 312, s. 2; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 349; 1943, c. 499, s. 2; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 5; 1967, c. 1130; c. 1237, s. 5.)

Editor's Note.—

Both 1967 amendments increased the salary from $18,000 to $20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

Article 2.

Maximum Working Hours.

§ 95-17. Limitations of hours of employment; exceptions.—No employer shall employ a female person for more than forty-eight hours in any one week or nine hours in any one day, or on more than six days in any period of seven consecutive days.

No employer shall employ a male person for more than fifty-six hours in any one week, or more than twelve days in any period of fourteen consecutive days or more than ten hours in any one day, except that in case where two or more shifts of eight hours each or less per day are employed, any shift employee may be employed not to exceed double his regular shift hours in any one day whenever a fellow employee in like work is prevented from working because of illness or other cause: Provided, that any male person employed working in excess of fifty-five hours in any one week shall be paid time and a half at his regular rate of pay for such excess hours: Provided, in case of emergencies, repair crews, engineers, electricians, firemen, watchmen, office and supervisory employees and employees engaged in hereinafter defined continuous process operations and in work, the nature of which prevents second shift operations, may be employed for not more than sixty hours in any one week: Provided, also, that the ten hours per day maximum shall not apply to any employee when his employment is required for a longer period on account of an emergency due to breakdown, installation or alteration of equipment: Provided, also, that the ten hours per day maximum shall not apply to any employee who is employed as a motor vehicle mechanic on a commission, or who is employed partly on commission and partly on wage or salary basis: Provided, that boys over fourteen years of age delivering newspapers on fixed routes and working not more than twenty-four hours per week, and watchmen may be employed seven days per week: Provided, further, that for a period of one week's duration between Thanksgiving and Christmas and also for two periods of one week's duration each during the year for purpose of taking inventory, female persons over sixteen years of age in mercantile establishments may be employed not to exceed ten hours in any one day: Provided, further, that female persons engaged in the operation of seasonal industries in the process of conditioning and preserving perishable or semiperishable commodities may be employed for not more than ten hours in any one day and not more than fifty-five hours in any one week.

No provision in this article shall be deemed to authorize the employment of any minor in violation of the provisions of any law expressly regulating the hours of labor of minors or of any regulations made in pursuance of such laws.

Where the day is divided into two or more work periods for the same employee, the employer shall provide that all such periods shall be within twelve consecutive hours, except that in the case of employees of motion picture theatres, restaurants, dining rooms, and public eating places, such periods shall be within fourteen consecutive hours:

Provided, that the transportation of employees to and from work shall not constitute any part of the employees' work hours.

Nothing in this section or any other provisions of this article shall apply to the employment of persons in agricultural occupations, ice plants, cotton gins and cottonseed oil mills or in domestic service in private homes and boardinghouses, or to the work of persons over eighteen years of age in bona fide office, foremanship, clerical or supervisory capacity, executive positions, learned professions, commercial travelers, motion picture theatres, seasonal hotels and clubhouses, commercial fishing or tobacco redrying plants, tobacco warehouses, fruit and vegetable processing plants, employers employing a total of not more than eight persons in each place of business, charitable institutions and hospitals: Provided

further, that nothing in this section or in any other provision of this article shall apply to railroads, common carriers and public utilities subject to the jurisdiction of the Interstate Commerce Commission or the North Carolina Utilities Commission, and utilities operated by municipalities or any transportation agencies now regulated by the federal government: Provided, further, that the limitation on daily and weekly hours and the number of days in any period of fourteen consecutive days provided for in this section shall not apply to any employee eighteen years of age and over whose employment is covered by or in compliance with the Fair Labor Standards Act of 1938 (Public No. 718; 75th Congress; Chapter 676-3rd Session), as amended or as same may be amended: Provided, nothing in this article shall apply to the State or to municipal corporations or their employees, or to employees in hotels.

When, by reason of a seasonal rush of business, any employer finds or believes it to be necessary that the employees of his or its manufacturing plant shall work for more than fifty-six hours per week, the employer may apply to the Commissioner of Labor of the State of North Carolina for permission to allow the employees of such establishment to work a greater number of hours than fifty-six for a definite length of time not exceeding sixty days; and the Commissioner after investigation, may, in his discretion, issue such permit on the condition that all such employees shall receive one and one-half times the usual compensation for all hours worked over fifty-six per week: Provided, this shall not apply to the hours of any female person or any person under the age of eighteen years: Provided further, employees in all laundries and dry cleaning establishments shall not be employed more than fifty-five hours in any one week: Provided further, nothing contained in this article shall be construed to limit the hours of employment of any outside salesmen on commission basis. Provided, that this article shall not apply to male clerks in mercantile establishments. Provided, that this article shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: One week prior to and including Easter, one week prior to and including Christmas, and one week prior to and including Mother's Day. (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057; 1959, c. 629; 1961, c. 1070; 1965, c. 724; 1967, c. 998.)

Editor's Note.—

The 1965 amendment inserted "fruit and vegetable processing plants" in the sixth paragraph.

The 1967 amendment deleted "male" preceding "employee" in the second proviso in the sixth paragraph.

ARTICLE 7.

Board of Boiler Rules and Bureau of Boiler Inspection.

§ 95-64. Boiler inspections; fee; certificate; suspension.—On and after April first, nineteen hundred and thirty-five, each steam boiler used or proposed to be used within this State, except boilers exempt under § 95-60, shall be thoroughly inspected internally and externally while not under pressure by the chief inspector or by one of the deputy inspectors or special inspectors provided for herein, as to its design, construction, installation, condition and operation; and if it shall be found to be suitable, and to conform to the rules and regulations of the Board of Boiler Rules, the owner or user of a steam boiler as required in this article to be inspected shall pay to the chief inspector the sum of two dollars ($2.00) for each inspection certificate issued, and the chief inspector shall issue to the owner or user thereof an inspection certificate specifying the maximum pressure which it may be allowed to carry. Such inspection certificate shall be valid for not more than fourteen months from its date, and it shall be posted under glass in the engine or boiler room containing such boiler, or an engine operated by it, or, in the case of a portable boiler, in the office of the

plant where it is located for the time being. No inspection certificate issued for a boiler inspected by a special inspector shall be valid after the boiler for which it was issued shall cease to be insured by a duly authorized insurance company. The chief inspector or any deputy inspector may, at any time, suspend an inspection certificate when, in his opinion, the boiler for which it was issued may not continue to be operated without menace to the public safety, or when the boiler is found not to comply with the rules herein provided for and a special inspector shall have corresponding powers with respect to inspection certificates for boilers insured by the company employing him. Such suspension of an inspection certificate shall continue in effect until said boiler shall have been made to conform to the rules and regulations of the Board of Boiler Rules and until said inspection certificate shall have been reinstated by a State inspector, if the inspection certificate was suspended by a State inspector, or by a special inspector, if it was suspended by a special inspector. Not more than fourteen months shall elapse between such inspections and there shall be at least four such inspections in thirty-seven consecutive months. Each such boiler shall also be inspected externally while under pressure with at least the same frequency, and at no greater intervals. (1935, c. 326, s. 10; 1937, c. 125, s. 2; 1939, c. 361, s. 1; 1967, c. 490, s. 1.)

Editor's Note.—
The 1967 amendment, effective July 1, 1967, increased the fee from $1.00 to $2.00.

§ 95-64.1. Inspection of low pressure steam heating boilers, hot water heating and supply boilers and tanks.—(a) This section applies only to low pressure steam heating boilers, hot water heating boilers, hot water supply boilers and hot water supply tanks, fired or unfired.

(b) On and after July 1, 1951, each boiler or tank used or proposed to be used within this State, except boilers or tanks exempt under G.S. 95-60, shall be thoroughly inspected as to their construction, installation, condition and operation as follows:

(1) Boilers and tanks shall be inspected both internally and externally biennially where construction will permit; provided that a grace period of two (2) months longer than the twenty-four (24) months' period may elapse between internal inspections of a boiler or tank while not under pressure or between external inspections of a boiler or tank while under pressure. The inspection herein required shall be made by the chief inspector, or by a deputy inspector or by a special inspector, provided for in this article.

(2) If at any time a hydrostatic test shall be deemed necessary, it shall be made, at the discretion of the inspector, by the owner or user thereof.

(3) All boilers or tanks to be installed in this State after the date upon which the rules and regulations of the Board relating to such boilers or tanks become effective shall be inspected during construction as required by the applicable rules and regulations of the Board by an inspector authorized to inspect boilers and tanks in this State, or, if constructed outside the State, by an inspector holding a certificate from the National Board of Boiler and Pressure Vessel Inspectors, or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this State provided by G.S. 95-63.

(4) If upon inspection, a boiler or tank is found to comply with the rules and regulations of the Board, the owner or user thereof shall pay directly to the chief inspector, the sum of two dollars ($2.00) and the chief inspector, or his duly authorized representative, shall issue to such owner or user an inspection certificate bearing the date of in-

spection and specifying the maximum pressure under which such boiler or tank may be operated. Such inspection certificate shall be valid for not more than twenty-six (26) months. Certificates shall be posted under glass in the room containing the boiler or tank inspected or in the case of a portable boiler or tank in a metal container to be fastened to the boiler or to be kept in a toolbox accompanying the boiler.

(5) No inspection certificate issued for an insured boiler or tank inspected by a special inspector shall be valid after the boiler or tank for which it was issued shall cease to be insured by a company duly authorized by this State to carry such insurance.

(6) The chief inspector or his authorized representative may at any time suspend an inspection certificate when, in his opinion, the boiler or tank for which it was issued, cannot be operated without menace to public safety, or when the boiler or tank is found not to comply with the rules and regulations herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or tanks insured by the company employing him. Such suspension of an inspection certificate shall continue in effect until such boiler or tank shall have been made to conform to the rules and regulations of the Board, and until said inspection certificate shall have been reinstated. (1951, c. 1107, s. 6; 1967, c. 490, s. 2.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, increased the fee in subdivision (4) of subsection (b) from $1.00 to $2.00.

§ 95-68. **Fees for internal and external inspections.**—The person using, operating or causing to be operated any boiler listed in this section, required by this article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector, for the inspection of any such boiler, fees in accordance with the following schedule:

Miniature boilers, which do not exceed 16 inches inside diameter of shell, 100 pounds per square inch maximum allowable working pressure:	
General inspection	$ 6.00
Fire tube boilers with hand holes only:	
Internal inspection	7.00
External inspection while under pressure	5.00
Fire tube boilers with manholes:	
Internal inspection	15.00
External inspection while under pressure	5.00
Water tube boilers (coil type):	
General inspection	7.00
Water tube boilers with not more than 500 square feet of heating surface:	
Internal inspection	7.00
External inspection while under pressure	5.00
Water tube boilers with more than 500 but not more than 3000 square feet of heating surface:	
Internal inspection	15.00
External inspection while under pressure	5.00
Water tube boilers with more than 3000 feet of heating surface:	
Internal inspection	25.00
External inspection while under pressure	8.00

Provided, that two dollars ($2.00) of each internal inspection fee shall be the fee for the certificate of inspection required by G.S. 95-64. The inspector shall give receipts for said fees and shall pay all sums so received to the Commissioner of Labor, who shall pay the same to the Treasurer of the State. The Treasurer of the

State shall hold the fees collected under this section and under G.S. 95-64 in a special account to pay the salaries and expenses incident to the administration of this article, the surplus, with the approval of the Director of the Budget, to be added to the appropriation of the Division of Standards and Inspections of the Department of Labor for its general inspection service. (1935, c. 326, s. 13; 1937, c. 125, s. 3; 1939, c. 361, s. 2; 1951, c. 544, s. 3; 1967, c. 490, s. 3.)

Editor's Note.— The 1967 amendment, effective July 1, 1967, increased all fees and made other changes in the schedule and substituted "two dollars ($2.00)" for "one dollar ($1.00)" near the beginning of the proviso following the schedule.

§ 95-68.1. Other inspection fees.—The person using, operating or causing to be operated any low pressure steam heating boiler, hot water heating boiler hot water supply boiler, or hot water supply tank, fired or unfired, required by this article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector for the biennial inspection of any such boiler or tank fees in accordance with the following schedule: Provided that two dollars ($2.00) of each inspection fee shall be the fee for the certificate of inspection required by G.S. 95-64.1:

Low pressure steam and hot water boilers, equipped only with hand holes and washout plugs	$ 6.00
Low pressure steam and hot water boilers, equipped with manhole	15.00
Hot water supply boilers	4.00
Tanks that are not equipped with manhole	4.00
Tanks equipped with manhole	8.00

(1951, c. 1107, s. 10; 1967, c. 490, s. 4.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, increased all fees and substituted "two dollars ($2.00)" for "one dollar ($1.00)" in the proviso preceding the schedule of fees.

Article 11.

Minimum Wage Act.

§ 95-87. Minimum wages.—Every employer shall pay to each of his employees wages at a rate not less than one dollar ($1.00) per hour. (1959, c. 475; 1963, c. 816; 1965, c. 229.)

Editor's Note.— The 1965 amendment, effective Jan. 1, 1966, substituted "one dollar ($1.00)" for "eighty-five cents (85¢)."

Article 12.

Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions.

§ 95-97. Employees of units of government prohibited from becoming members of trade unions or labor unions.

Applied in NLRB v. Randolph Elec. Membership Corp., 343 F.2d 60 (4th Cir. 1965).

§ 95-98. Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.

Quoted in NLRB v. Randolph Elec. Membership Corp., 343 F.2d 60 (4th Cir. 1965).

§ 95-99. Penalty for violation of article.

Stated in NLRB v. Randolph Elec. Membership Corp., 343 F.2d 60 (4th Cir. 1965).

Chapter 96.

Employment Security.

ARTICLE 1.

Employment Security Commission.

§ 96-3. Employment Security Commission.

(c) Salaries.—The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission; and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund.

(1965, c. 795, s. 1.)

Editor's Note.—

The 1965 amendment substituted "the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such" for "ten dollars ($10.00) per day" in subsection (c).

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

§ 96-4. Administration.

Authority of Chairman of Commission.—

The decision and order of the chairman, under subsection (a), are deemed the decision and order of the Commission. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

Cited in State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

ARTICLE 2.

Unemployment Insurance Division.

§ 96-8. Definitions.

(5) "Employer" means:

a. With respect to any calendar year prior to 1956, any employing unit which was an employer during such year as previously defined in this chapter applicable to any such year. With respect to employment during the calendar year 1956, "employer" means any employing unit which in each of twenty different weeks within such calendar year (whether or not such weeks are or were consecutive) has, or had in employment, four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), and with respect to employment on and

after January 1, 1957, "employer" means any employing unit which in each of twenty different weeks within the current or preceding calendar year (whether or not such weeks are or were consecutive) has, or had in employment, four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week): Provided further, for the purpose of this subdivision, "week" means calendar week, and when a calendar week falls partly within each of two calendar years, such week shall be deemed to be within the calendar year within which such week ends: Provided further, that for purposes of this subdivision "employment" shall include services which would constitute "employment" but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the Commission pursuant to subsection (1) of § 96-4, and an agency charged with the administration of any other state or federal employment security law.

b. Any employing unit which acquired the organization, trade or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another, which at the time of such acquisition was an employer subject to this chapter; provided, such other would have been an employer under paragraph a of this subdivision, if such part had constituted its entire organization, trade, or business; provided further, that § 96-10, subsection (d), shall not be applicable to an individual or employing unit acquiring such part of the organization, trade or business. The provisions of § 96-11 (a), to the contrary notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the Commission within sixty days from the date the Commission mails him a notification of his liability and provided the Commission finds the predecessor was an employer at the time of such acquisition only because such predecessor had failed to make application for termination of coverage as provided in § 96-11 of this chapter. A successor under the provisions of this paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the Commission within sixty days from the date the Commission mails him a notification of his liability and the Commission finds that the predecessor could have terminated by making the application under § 96-

11 if the part acquired had constituted all of the predecessor's business.

c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph a of this subdivision, provided the acquiring employing unit is owned, or controlled (by legally enforceable means or otherwise), directly or indirectly, by the same interests which own, or control (by legally enforceable means or otherwise), directly or indirectly, the employing unit from which the organization, trade, or business, or substantially all the assets were acquired.

d. Any employing unit which, having become an employer under paragraphs a, b, or c, has not, under § 96-11, ceased to be an employer subject to this chapter; or

e. For the effective period of its election pursuant to § 96-11 (c) any other employing unit which has elected to become fully subject to this chapter.

f. Any employing unit not an employer by reason of any other paragraph of this subdivision, for which, within any calendar year, services in employment are or were performed with respect to which such employing unit is or was liable for any federal tax against which credit may or could have been taken for contributions required to be paid into a State Unemployment Insurance Fund; provided, that such employer, notwithstanding the provisions of § 96-11, shall cease to be subject to the provisions of this chapter during any calendar year if the Commission finds that during such period the employer was not subject to the provisions of the Federal Unemployment Tax Act and any other provision of this chapter.

g. Any employing unit with its principal place of business located outside of the State of North Carolina, which engages in business within the State of North Carolina, and which, during any period of twelve consecutive months, has in employment four or more individuals in as many as twenty different weeks shall be deemed to be an employer and subject to the other provisions of this chapter.

h. Any employing unit which maintains an operating office within this State from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled: Provided, the employing unit would be an employer by reason of any other paragraph of this subdivision.

i. Any employing unit which, after July 1, 1961, acquired a part of the organization, trade or business of another which if treated as a single unit with such part acquired would be an employer under paragraph a of this subdivision if such part acquired had constituted all of the organization, trade or business of the predecessor, provided the acquiring employing unit is owned, or controlled (by legally enforceable means or otherwise), directly or indirectly, by the same interests which own, or control (by legally enforceable means or otherwise), directly or indirectly, the employing unit from which such part of the organization, trade, or business was acquired.

(10) "Total and partial unemployment."

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services.

b. An individual shall be deemed "partially unemployed" in any week in which he worked, but because of lack of work he worked less than three customary scheduled full-time days of the industry, plant, or establishment in which he is employed, and with respect to which the wages payable to him rounded to the next highest dollar are less than his weekly benefit amount plus an amount equal to one half of such weekly benefit amount.

c. An individual shall be deemed "part totally unemployed" in any week in which his earnings from odd jobs or subsidiary work are less than his weekly benefit amount plus an amount equal to one half of his weekly benefit amount.

d. No individual shall be considered unemployed for any period with a result of his separation from employment, remuneration in respect to which he is receiving, has received, or will receive, as the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, (vi) accumulated sick leave payments, or (vii) any other type of dismissal payments or wages by whatever name.

e. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.

(17) a. "Benefit year" and "valid claim," prior to July 1, 1961, with respect to any individual, means "benefit year" and "valid claim" as heretofore defined by the provisions of this chapter prior to such July 1, 1961. As to claims filed on or after July 1, 1961, and before July 1, 1965, by individuals who do not have benefit years in progress, "benefit year" with respect to any such individual means the one-year period beginning with the first day of the first week with respect to which the individual first registers for work and files a valid claim for benefits. After the termination of such benefit year, the next benefit year shall be the next one-year period beginning with the first day of the first week with respect to which such individual registers for work and files a valid claim. A valid claim shall be deemed to have been filed if such individual, at the time the claim is filed, is unemployed and has been paid wages in more than one calendar quarter of his base period amounting to at least the minimum of the qualifying base period wages as set forth in the applicable table in § 96-12, and when such individual has in his last established benefit year exhausted his maximum benefit entitlement, he must also have met the provisions of § 96-12 (b) (3).

b. As to claims filed on or after July 1, 1965, by individuals who do not have benefit years in progress, "benefit year" with respect to any such individual means the one-year period beginning with the first day of the first week with respect to which the individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed if such individual, at the time the claim is filed, is unemployed and has been paid wages in his base period amounting to at

least the minimum qualifying wages as set forth in the applicable table in General Statutes 96-12 and, in addition, must have been paid wages in other than the high quarter of his base period equal to at least twenty per cent (20%) of the minimum required base period earnings for his assigned weekly benefit amount as shown in the applicable table in General Statutes 96-12. When such individual has in his last established benefit year exhausted his maximum benefit entitlement, he must also have met the provisions of General Statutes 96-12 (b) (3). After the termination of such benefit year, the next benefit year shall be the next one-year period beginning with the first day of the first week with respect to which such individual registers for work and files a valid claim.

(1965, c. 795, ss. 2-5.)

Editor's Note.—

The 1965 amendment added at the end of paragraphs c and i of subdivision (5) the language beginning with the word "provided," rewrote paragraph b of subdivision (10), deleted "figured to the nearest multiple of one dollar ($1.00)" at the end of paragraph c of that subdivision, added present paragraph d therein, redesignated former paragraph d of the subdivision as paragraph e and rewrote subdivision (17).

As only subdivisions (5), (10) and (17) were changed by the amendment, the rest of the section is not set out.

§ 96-9. Contributions.

(b) Rate of Contributions.—

(1) Each employer shall pay contributions with respect to employment during any calendar year prior to January 1, 1955, as required by this chapter prior to such January 1, 1955, and each employer shall pay contributions equal to two and seven tenths (2.7) per cent of wages paid by him during the calendar year 1955 and each year thereafter with respect to employment occurring after December 31, 1954, which shall be deemed the standard rate of contributions payable by each employer except as provided herein.

(2) a. No employer's contribution rate shall be reduced below the standard rate for any calendar year unless and until his account has been chargeable with benefits throughout the twelve consecutive calendar-month period ending July 31 immediately preceding the computation date and his credit reserve ratio meets the requirements of that schedule used in the computation.

b. The Commission shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance and has been chargeable with benefits as set forth in G.S. 96-9 (b) (2) a of this chapter. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of such employer's account as of July 31 of each year by the total taxable payroll of such employer for the thirty-six calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of General Statutes 96-9 (c) (1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.

c. The Commission shall for each year compute a debit ratio for each employer whose account shows that the total of all his contributions paid and credited for all past periods in accordance with the provisions of General Statutes 96-9 (c) (1)

together with all other lawful credits is less than the total benefits charged to his account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of such employer's account as of July 31 of each year by the total taxable payroll of such employer for the thirty-six calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of General Statutes 96-9 (c) (1) together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.

(3) a. The applicable schedule of rates for a calendar year shall be determined by the fund ratio resulting when the total amount available for benefits in the unemployment insurance fund, as of the computation date, is divided by the total amount of the taxable payroll of all subject employers for the twelve-month period ending June 30 preceding such computation date. Schedule A, B, C, D, E, F, G, or H appearing on the line opposite such fund ratio in the table below shall be applicable in determining and assigning each eligible employer's contribution rate for the calendar year immediately following the computation date:

FUND RATIO SCHEDULES

When the Fund Ratio Is:		Applicable
As Much As	But Less Than	Schedule
———	4.5%	A
4.5%	5.5%	B
5.5%	6.5%	C
6.5%	7.5%	D
7.5%	8.5%	E
8.5%	9.5%	F
9.5%	10.5%	G
10.5% and in excess thereof		H

Variations from the standard rate of contributions shall be determined and assigned with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefor according to each such employer's credit reserve ratio, and each such employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, E, F, G, or H on the line opposite his credit reserve ratio as set forth in the Experience Rating Formula below:

EXPERIENCE RATING FORMULA

When the Credit Reserve Ratio Is: As Much As	But Less Than	Schedules							
		A	B	C	D	E	F	G	H
	1.4%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
1.4%	1.6%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5
1.6%	1.8%	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3
1.8%	2.0%	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1
2.0%	2.2%	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9
2.2%	2.4%	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7
2.4%	2.6%	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5
2.6%	2.8%	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3
2.8%	3.0%	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1
3.0%	3.2%	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9
3.2%	3.4%	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7
3.4%	3.6%	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5
3.6%	3.8%	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4
3.8%	4.0%	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3
4.0%	4.2%	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2
4.2%	4.4%	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1
4.4% and in excess thereof		0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1

b. New rates shall be assigned to eligible employers effective January 1, 1955, and each January 1 thereafter. in accordance with the foregoing Fund Ratio Schedule and Experience Rating Formula.

c. Each employer whose account as of any computation date occurring after August 1, 1964, shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

RATE SCHEDULE FOR OVERDRAWN ACCOUNTS BEGINNING WITH THE CALENDAR YEAR 1966

When the Debit Ratio Is: As Much As	But Less Than	Assigned Rate
0.0	0.3	2.9%
0.3	0.6	3.1%
0.6	0.9	3.3%
0.9	1.2	3.5%
1.2	1.5	3.7%
1.5	1.8	3.9%
1.8	2.1	4.1%
2.1	2.4	4.3%
2.4	2.7	4.5%
2.7 and over		4.7%

New rates with respect to overdrawn accounts shall be assigned to employers effective January 1, 1966, in accordance with the foregoing Rate Schedule for Overdrawn Accounts; provided, however, that rates applicable to the year 1965 and prior years thereto shall be assigned in accordance with the provisions of General Statutes 96-9 (b) (3) c of the law as such existed prior to June 3, 1965.

d. The computation date for all contribution rates shall be August 1 of the calendar year preceding the calendar year with respect to which such rates are effective.

e. Any employer may at any time make a voluntary contribution, additional to the contributions required under this chapter, to the fund to be credited to his account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as said term is used in G.S. 96-8 (8). Any voluntary contributions so made by an employer within thirty days after the date of mailing by the Commission pursuant to G.S. 96-9 (c) (3) herein, of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to his account as of the previous July 31. Provided, however, any voluntary contribution made as provided herein after July 31 of any year shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9 (b) (3) until the following July 31. The Commission in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of such voluntary contribution by any employer.

f. If, within the calendar month in which the computation date occurs, the Commission finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the Commission finds incorrect or insufficient, the Commission shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of such notice, the Commission shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.

(c) (1) The Commission shall maintain a separate account for each employer and shall transfer to such account such employer's reserve account balance as of July 31, 1952, and shall credit his account with all voluntary contributions made by him and all other contributions which he has paid or is paid on his own behalf subsequent to July 31, 1952, with respect to employment occurring after such date and prior to July 1, 1965, provided that any voluntary contribution made by an employer under the provisions of G.S. 96-9 (b) (3) e, and credited to his account as of any date subsequent to July 31, 1965, shall be credited to such account in an amount equal to eighty per cent (80%) of the amount of such voluntary contribution. The Commission shall credit the account of each employer in an amount equal to eighty per cent (80%) of all contributions which he has paid or is paid on his own behalf with respect to employment occurring subsequent to June 30, 1965. On the computation date, beginning first with August 1, 1948, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to this State's account in the unemployment

trust fund in the treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Charging of benefit payments.—

a. Benefits paid shall be charged against the account of each base period employer on wages paid to an eligible individual in any quarter prior to April 1, 1959, in the base period as provided by this chapter prior to April 1, 1959. Benefits paid shall be charged against the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter subsequent to March 31, 1959, by each such employer bears to the total wages paid by all base period employers during the base period, except as provided in paragraph b of this subdivision. Benefits paid on and after August 1, 1952, shall be charged to employers' accounts upon the basis of benefits paid to claimants whose maximum total benefits have been exhausted or whose benefit years have expired during each twelve-months' period ending on the July 31, preceding the computation date.

b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the voluntary leaving of work by the claimant without good cause attributable to the employer, or (ii) the discharge of claimant for misconduct in connection with his work, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding the separation of the individual from work as are or may be required by the regulations of the Commission.

(3) As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each employer's account and shall furnish him with a statement of all charges and credits thereto. At the same time the Commission shall notify each employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The Commission may redetermine on its own motion within the same period of time.

(4) Transfer of account.—

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner, succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in § 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within sixty days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. This provision shall not be retroactive with respect to the transfer of a part of an account of the predecessor in those cases in which an employing unit succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in § 96-8, subdivision (5), paragraph b, and shall apply only when the transfer of such distinct and severable portion of the organization, trade, or business of another occurred after March 31, 1949.

b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this chapter prior to the date of acquisition of the business, his rate of contribution for the period from such date to the end of the then current contribution year shall be the same as his rate in effect on the date of such acquisition. If the successor was not an employer prior to the date of the acquisition of the business he shall be assigned a standard rate of contribution set forth in § 96-9 (b) (1) for the remainder of the year in which he acquired the business of the predecessor; however, if such successor makes application for the transfer of the account within sixty days after notification by the Commission of his right to do so and the account is transferred, he shall be assigned for the remainder of such year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, provided there was only one predecessor or if more than one and the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this chapter, when an

account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard rate of contributions of two and seven tenths per cent (2.7%) and shall continue to pay at such rate until he qualifies for a reduction, or is subject to an increase in rate under the conditions prescribed in § 96-9 (b) (2) and (3).

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

(5) In the event any employer subject to this chapter ceases to be such an employer, his account shall be closed and the same shall not be used in any future computation of such employer's rate nor shall any period prior to the effective date of the termination of such employer during which benefits were chargeable be considered in the application of § 96-9 (b) (2) of this chapter.

(1965, c. 795, ss. 6-10.)

Editor's Note.—

The 1965 amendment rewrote the last sentence in paragraph b of subdivision (2) of subsection (b), added "in accordance with the provisions of General Statutes 96-9 (c) (1)" twice in paragraph c of that subdivision, substituted "past" for "such" preceding "periods" at the end of the first sentence in that paragraph, rewrote paragraph c of subdivision (3) of subsection (b), substituted the present first two sentences in subdivision (1) of subsection (c) for the former first sentence in such subdivision and substituted "paid" for "earned" following "wages" in paragraph b of subdivision (2) of subsection (c).

As only subsections (b) and (c) were changed by the amendment, the rest of the section is not set out.

§ 96-10. Collection of contributions.

(e) Refunds.—If not later than five years from the last day of the calendar year with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employer or employing unit who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund, and the Commission shall determine that such contributions or any portion thereof was erroneously collected, the Commission shall allow such employer or employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such an adjustment cannot be made in the next succeeding calendar quarter after such application for such refund is received, or if said money which constitutes the overpayment has been in the possession of the Commission for six months or more, a cash refund may be made, without interest, from the fund: Provided, that any interest refunded under this subsection, which has been paid into the Special Employment Security Administration Fund established pursuant to § 96-5 (c), shall be paid out of such fund. For like cause and within the same period, adjustment or refund may be so made on the Commission's own initiative. Provided further, that nothing in this section or in any other section of this chapter shall be construed as permitting the refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. In any case, where the Commission finds that any employing unit has erroneously paid to this State contributions or interest upon wages earned by individuals in employment in another state, refund or adjustment thereof shall be made, without interest, irrespective

of any other provisions of this subsection, upon satisfactory proof to the Commission that such other state has determined the employing unit liable under its law for such contributions or interest.

(1965, c. 795, s. 11.)

Editor's Note.—

The 1965 amendment substituted "such other state has determined the employing unit liable under its law for such contributions or interest" for "the payment of such contributions or interest has been made to such other state" at the end of the last sentence in subsection (e).

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

§ 96-11. Period, election, and termination of employer's coverage.

(c) (1) An employing unit, not otherwise subject to this chapter, which files with the Commission its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, it has filed with the Commission a written notice to that effect, provided such employing unit may be terminated by the Commission as provided under the provisions of subdivision (3) of this subsection.

(2) Any employing unit for which services that do not constitute employment as defined in this chapter are performed may file with the Commission a written election that all such services performed by individuals in its employ, in one or more distinct establishments or places of business, shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the Commission such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment, subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, such employing unit has filed with the Commission a written notice to that effect, provided such employing unit may be terminated by the Commission as provided under the provisions of subdivision (3) of this subsection.

(3) On and after July 1, 1965, the Commission on its own motion and in its discretion, upon thirty (30) days written notice mailed to the last known address of such employer, may terminate coverage of any employer which has become subject to this chapter solely by electing coverage under the provisions of this subsection.

(d) An employer who has not had any individuals in employment for a period of two consecutive calendar years shall cease to be an employer subject to this chapter. An employer who has not had individuals in employment and who has made due application for exemption from filing contributions and wage reports required under this chapter and has been so exempted may be terminated from liability upon written application within one hundred twenty (120) days after notification of the reactivation of his account. Such termination shall be effective January 1 of any calendar year only if the Commission finds there were no twenty different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed four or more individuals in employment (eight or more prior to January 1, 1956) not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week. In such cases a protest of liability shall be considered as an ap-

plication for termination within the meaning of this provision where the decision with respect to such protest has not become final. (Ex. Sess. 1936, c. 1, s. 8; 1939, c. 52, ss. 2, 3; 1941, c. 108, s. 9; 1945, c. 522, ss. 21-23; 1949, c. 424, ss. 17, 18; c. 522; 1951, c. 332, s. 9; c. 1147; 1953, c. 401, s. 16; 1955, c. 385, s. 10; 1959, c. 362, ss. 10, 11; 1961, c. 454, s. 16; 1965, c. 795, ss. 12-14.)

Editor's Note.—

The 1965 amendment added at the end of subdivisions (1) and (2) of subsection (c) the language beginning with the word "provided," added subdivision (3) at the end of that subsection and rewrote the second sentence in subsection (d).

As only subsections (c) and (d) were changed by the amendment, subsections (a) and (b) are not set out.

§ 96-12. Benefits.

(b) (1) Each eligible individual whose benefit year begins on and after the first day of July, 1961, and prior to the first day of July, 1965, and who is totally unemployed during any week as defined by General Statutes 96-8 (10) a, shall be paid benefits with respect to such week or weeks at the rate per week appearing in the following table in Column II opposite which in Column I appear the wages paid to such individual during his base period with respect to employment:

Column I Wages Paid During Base Period		Column II Weekly Benefit Amount
Less than $550.00		Ineligible
$550.00	to $649.99	$12.00
650.00	749.99	13.00
750.00	849.99	14.00
850.00	949.99	15.00
950.00	1,059.99	16.00
1,060.00	1,169.99	17.00
1,170.00	1,279.99	18.00
1,280.00	1,389.99	19.00
1,390.00	1,499.99	20.00
1,500.00	1,619.99	21.00
1,620.00	1,739.99	22.00
1,740.00	1,859.99	23.00
1,860.00	1,979.99	24.00
1,980.00	2,099.99	25.00
2,100.00	2,239.99	26.00
2,240.00	2,379.99	27.00
2,380.00	2,529.99	28.00
2,530.00	2,679.99	29.00
2,680.00	2,839.99	30.00
2,840.00	2,999.99	31.00
3,000.00	3,199.99	32.00
3,200.00	3,399.99	33.00
3,400.00	3,599.99	34.00
3,600.00	and over	35.00

(2) Each eligible individual whose benefit year begins on and after the first day of July, 1965, and who is totally unemployed as defined by § 96-8 (10) a, shall be paid benefits with respect to such week or weeks at the rate per week appearing in the following table in Column II opposite which in Column I appear the wages paid to such individual during his base period with respect to employment; provided he has been paid qualifying wages in other than the high quarter of his base

period in at least an amount equal to that appearing in Column III opposite his assigned weekly benefit amount which appears in Column II:

Column I Wages Paid During Base Period	Column II Assigned Weekly Benefit Amount	Column III Non-High Quarter Wages Required
Less than $550.00	Ineligible	
As much as $ 550.00 but not more than $ 649.99	$12.00	$110.00
As much as 650.00 but not more than 749.99	14.00	130.00
As much as 750.00 but not more than 949.99	16.00	150.00
As much as 950.00 but not more than 1,149.99	18.00	190.00
As much as 1,150.00 but not more than 1,349.99	20.00	230.00
As much as 1,350.00 but not more than 1,549.99	22.00	270.00
As much as 1,550.00 but not more than 1,749.99	24.00	310.00
As much as 1,750.00 but not more than 1,949.99	26.00	350.00
As much as 1,950.00 but not more than 2,149.99	28.00	390.00
As much as 2,150.00 but not more than 2,349.99	30.00	430.00
As much as 2,350.00 but not more than 2,599.99	32.00	470.00
As much as 2,600.00 but not more than 2,999.99	34.00	520.00
As much as 3,000.00 but not more than 3,399.99	36.00	600.00
As much as 3,400.00 but not more than 3,799.99	38.00	680.00
As much as 3,800.00 but not more than 4,199.99	40.00	760.00
As much as 4,200.00 and over	42.00	840.00

(3) Qualifying Wages for Exhaustees.—An individual who has exhausted his maximum benefit entitlement in his last previous benefit year who files a claim for benefits on or after July 1, 1961, shall not be entitled to benefits unless he has been paid qualifying wages required in § 96-12 (b) (2) and since the beginning date of his last established previous benefit year and before the date upon which he files his new benefit claim has been paid wages equal to at least ten times the weekly benefit amount of the new benefit year claim. Such wages must have been earned with an employer subject to the provisions of this chapter or some other state employment security law or in federal service as defined in Title XV of the Social Security Act.

(c) Partial Weekly Benefit.—Each eligible individual who is either partially unemployed or part totally unemployed (as defined in § 96-8 (10) b and c) in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be an amount which is equal to the difference between his weekly benefit amount and that part of the remuneration payable to him with respect to such week figured to the next highest dollar which is in excess of a sum equal to one half of his weekly benefit amount.

(1965, c. 795, ss. 15, 16.)

Editor's Note.—

The 1965 amendment changed the dates in subdivision (1) of subsection (b) and rewrote the table therein, changed the date in subdivision (2) of that subsection, and added the proviso which precedes the table in such subdivision, rewrote the table therein and rewrote subsection (c).

As only subsections (b) and (c) were changed by the amendment, the rest of the section is not set out.

§ 96-13. Benefit eligibility conditions.—An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that—

(1) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe;

(2) He has made a claim for benefits in accordance with the provisions of § 96-15 (a);

(3) He is able to work, and is available for work: Provided that no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment, shall during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, that no individual separated from employment after July 1, 1961, shall be considered able and available for work who has been separated from employment due to pregnancy from the date of such separation until the birth of such individual's child, and no individual shall be considered able and available for work, regardless of the cause of such individual's separation from employment, for any week during the three-month period immediately before the expected birth of a child to such individual and for any week during the three-month period immediately following the birth of a child to such individual; however, no individual shall be denied benefits by reason of this proviso in the event of the death of such child, if such individual is otherwise eligible: Provided further, however, that effective January 1, 1949, no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which as much as sixty per cent of the full time working hours consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance.

(4) He has been either totally, partially, or part totally unemployed for a waiting period of one week with respect to each benefit year. No week shall be counted as a week of unemployment for waiting period credit under this provision, unless the claimant except for the provisions of this subdivision was otherwise eligible for benefits. (Ex. Sess. 1936, c. 1, s. 4; 1939, c. 27, ss. 4, 5; c. 141; 1941, c. 108, s. 2; 1943, c. 377, s. 5; 1945, c. 522, ss. 27-28; 1947, c. 326, s. 22; 1949, c. 424, s. 22; 1951, c. 332, s. 13; 1961, c. 454, s. 19; 1965, c. 795, ss. 17, 18.)

Editor's Note.—

The 1965 amendment added the last sentence in subdivision (3) and added subdivision (4).

Construed with § 96-14.—

This section and § 96-14, being in pari materia, are to be construed together. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

The words "available for work," etc.—

In accord with original. See In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

§ 96-14. Disqualification for benefits.

(5) If the Commission finds he is customarily self-employed and can reasonably return to self-employment.

(6) For any week after June thirtieth, one thousand nine hundred thirty-nine with respect to which he shall have and assert any right to unemployment benefits under an employment security law of either the federal or a state government, other than the State of North Carolina.

(7) For any week with respect to which he has received any sum from the employer pursuant to an order of the National Labor Relations Board or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on a pro rata basis; provided further that if the amount so prorated to a particular week is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits as provided under § 96-12 of this chapter. (Ex. Sess. 1936, c. 1, s. 5; 1937, c. 448, ss. 2, 3; 1939, c. 52, s. 1; 1941, c. 108, ss. 3, 4; 1943, c. 377, ss. 7, 8; 1945, c. 522, s. 29; 1947, c. 598, s. 10; c. 881, ss. 1, 2; 1949, c. 424, ss. 23-25; 1951, c. 332, s. 14; 1955, c. 385, ss. 7, 8; 1961, c. 454, s. 20; 1965, c. 795, s. 19.)

Editor's Note.—

The 1965 amendment eliminated former subdivision (5) and renumbered the following subdivisions.

As the opening paragraph and subdivisions (1) to (4) were not changed by the amendment, they are not set out.

Suitability is not a matter of rigid fixation. It depends upon circumstances and may change with changing circumstances. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

And "Unsuitable" Work May Become "Suitable".—Work which may be deemed "unsuitable" at the inception of the claimant's unemployment and for a reasonable time thereafter, because it pays less than his prior earning capacity, may thereafter become "suitable" work when consideration is given to the length of unemployment and the prospects for obtaining customary work at his prior earning capacity. What is a "reasonable time" is not rigid and inflexible and it must initially be determined as a question of fact under the peculiar circumstances of each individual case. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

Employment which may not be suitable while there is still a good present expectancy of obtaining other employment more nearly proportionate to the ability of the worker, may become suitable if that expectancy is not realized within a reasonable time. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

A claimant is entitled to a reasonable length of time within which to find work at his higher skill before work calling for less competence and lower remuneration can be found to be suitable. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

But the longer a claimant is unemployed, the more he is obligated to take less desirable work and to make himself available to take it. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

Elements Which Must Be Considered in Determining "Suitable Work". — The skill and capacity of the worker, his accustomed remuneration, his expectancy of obtaining equivalent employment, and the time which he had had to obtain it may be taken into account in determining "suitable work." In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

It may reasonably be thought that employment which requires a highly trained and skilled worker, who still has a fair prospect of securing work in his own line, to step down into work of a substantially lower grade, at substantially less pay, before he has had a chance to look about him, is not truly "suitable." Acceptance of such employment might conceivably condemn the worker permanently to a scale of employment lower than that to which his training, skill, and industry fairly entitle him. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

§ 96-15. Claims for benefits.

(b) (1) Initial Determination.—A representative designated by the Commission shall promptly examine the claim and shall determine whether or not the claim is valid, and if valid, the week with respect to when benefits shall commence, the weekly benefit amount payable, and the potential maximum duration thereof. The claimant shall be furnished a copy of such initial or monetary determination showing the amount of wages paid him by each employer during his base period and the employers by whom such wages were paid, his benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to him for unemployment during the benefit year. When a claimant is ineligible due to lack of earnings in his base period, the determination shall so designate. The claimant shall be allowed ten (10) days from the delivery of his initial determination to him within which to protest his initial or monetary determination and upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall be referred to a deputy for a decision as to the issues presented. The most recent and the base period employers shall be notified upon the filing of a claim which establishes a benefit year or an ineligible amount.

At any time within one year from the date of the making of an initial determination, the Commission on its own initiative may reconsider such determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.

(2) Hearings before Deputy.—When a protest is made by the claimant to his initial determination or a question or issue is presented or raised as to the eligibility of a claimant for benefits under § 96-13 herein, or whether any disqualification shall be imposed by virtue of § 96-14 of this chapter, or benefits denied, or his account adjusted pursuant to § 96-18 of this chapter, the claim shall be referred to a deputy who, after due notice to the parties and affording them reasonable opportunity for a fair hearing, shall find facts and make his decision based thereon; provided the deputy shall not be required to issue notice of, or to hold a formal hearing in cases involving interstate claims filed by a claimant in another state against this State, or in cases involving the failure of a claimant to meet any procedural requirement pertaining to the filing of claims, or the denial of benefits or the adjustment of the account of a claimant under § 96-18 of this chapter. The Commission may remove to itself or transfer to another deputy or to an appeal tribunal the proceedings on any claim pending before a deputy. The deputy shall promptly notify the claimant and any other interested party of his decision and the reason therefor. Unless the claimant or any such interested party, within five calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith, and for the purpose of this subdivision, the Commission shall be deemed an interested party: Provided, however, that on claims filed outside of this State, the claimant, or such interested party, shall have ten calendar days from the date of mailing such notification to his last known address in which to file notice of appeal. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the Commission shall be paid only after such determination: Provided further, however, that if an appeal tribunal affirms a decision of a deputy, or the Commission affirms a decision of an appeal tribunal

allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(i) Appeal Proceedings.—The decision of the Commission shall be final, subject to appeal as herein provided. Within ten days after the decision of the Commission has become final, any party aggrieved thereby who has filed notice of appeal within the ten-day period as provided by § 96-15 (h) may appeal to the superior court of the county of his residence. In case of such appeal, the court shall have power to make party-defendant any other party which it may deem necessary or proper to a just and fair determination of the case. In every case in which appeal is demanded, the appealing party shall file a statement with the Commission within the time allowed for appeal, in which shall be plainly stated the grounds upon which a review is sought and the particulars in which it is claimed the Commission is in error with respect to its decision. The Commission shall make a return to the notice of appeal, which shall consist of all documents and papers necessary to an understanding of the appeal, and a transcript of all testimony taken in the matter, together with its findings of fact and decision thereon, which shall be certified and filed with the superior court to which appeal is taken within thirty days of said notice of appeal. The Commission may also, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section the findings of the Commission as to the facts, if there is evidence to support it, and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner, and shall be given precedence over all civil cases, except cases arising under the Workmen's Compensation Law of this State. An appeal may be taken from the decision of the superior court, as provided in civil cases. The Commission shall have the right of appeal to the Supreme Court from a decision or judgment of the superior court and for such purpose shall be deemed to be an aggrieved party. No bond shall be required upon such appeal. Upon the final determination of the case or proceeding the Commission shall enter an order in accordance with such determination. When an appeal has been entered to any judgment, order, or decision of the court below, no benefits shall be paid pending a final determination of the cause, except in those cases in which the court below has affirmed a decision of the Commission allowing benefits or benefits are payable under the provisions of § 96-15 (b) (2). (Ex. Sess. 1936, c. 1, s. 6; 1937, c. 150; c. 448, s. 4; 1941, c. 108, s. 5; 1943, c. 377, ss. 9, 10; 1945, c. 522, ss. 30-32; 1947, c. 326, s. 23; 1951, c. 332, s. 15; 1953, c. 401, s. 19; 1959, c. 362, ss. 16, 17; 1961, c. 454, s. 21; 1965, c. 795, ss. 20-22.)

Editor's Note.—

The 1965 amendment inserted the present fourth sentence in subdivision (1) of subsection (b), substituted "When a protest is made by the claimant to his initial determination or" for "When" at the beginning of subdivision (2) of such subsection and rewrote the last sentence in subsection (i).

As only subsections (b) and (i) were changed by the amendment, the rest of the section is not set out.

§ 96-18. Penalties.

(e) An individual shall not be entitled to receive benefits for one year beginning with the first day following the last benefit week for which he received benefits, or one year from the date upon which the act was committed, whichever is the later, if he, or another in his behalf with his knowledge, has been found to have knowingly made a false statement or misrepresentation, or who has knowingly failed to disclose a material fact to obtain or increase any benefit or other payment under this chapter.

(f) Any individual who makes a voluntary confession of guilt or is convicted in a court of competent jurisdiction of larceny or embezzlement in connection with his employment shall not be entitled to receive any benefits based on the wages paid to such individual prior to and including the quarter in which such act oc-

curred; provided, the provisions of this subsection shall not be effective as to any benefits accrued or paid under any claim filed by such individual prior to the date this act occurred.

(1965, c. 795, ss. 23, 24.)

Editor's Note.—

The 1965 amendment rewrote subsection (e) and substituted "paid to" for "earned by" following "wages" in subsection (f).

As only subsections (e) and (f) were changed by the amendment, the rest of the section is not set out.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1967

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing 1967 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

THOMAS WADE BRUTON
Attorney General of North Carolina