THE GENERAL STATUTES OF NORTH CAROLINA

1971 CUMULATIVE SUPPLEMENT

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

UNDER THE DIRECTION OF

W. M. WILLSON, J. P. MUNGER, SYLVIA FAULKNER AND H. A. FINNEGAN, JR.

Volume 2C

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

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1971

Preface

This Cumulative Supplement to Replacement Volume 2C contains the general laws of a permanent nature enacted at the 1965, 1966, 1967 and 1969 Sessions of the General Assembly and those ratified by the General Assembly at the 1971 Session through July 21, 1971, which are within the scope of such volume, and brings to date the annotations included therein.

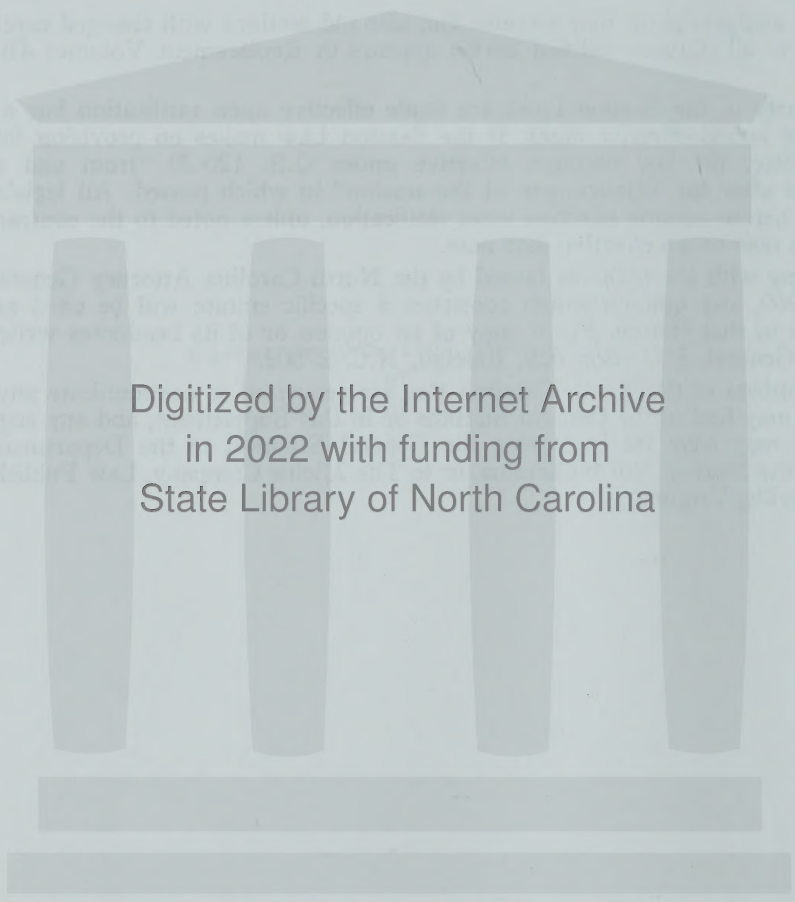
Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

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

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

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

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



Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1965, 1966, 1967 and 1969 Sessions of the General Assembly and those ratified by the General Assembly at the 1971 Session through July 21, 1971, affecting Chapters 63 through 96 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 260 (p. 133)-279 (p. 191).
North Carolina Court of Appeals Reports volumes 1-11 (p. 596).
Federal Reporter 2nd Series volumes 317-443 (p. 1216).
Federal Supplement volumes 217-328 (p. 224).
United States Reports volumes 373-403 (p. 442).
Supreme Court Reporter volumes 83 (p. 1560)-91 (p. 1976).
North Carolina Law Review volumes 41 (p. 665)-49 (pp. 1-591).
Wake Forest Intramural Law Review volumes 2-6 (p. 568).
Opinions of the Attorney General.

The General Statutes of North Carolina
1971 Cumulative Supplement

VOLUME 2C

Chapter 63.
Aeronautics.

Article 1.

Municipal Airports.

§ **63-1. Definitions; singular and plural.**—(a) Definitions.—For the purpose of this Chapter the following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

(2) "Aeronautics instructor" means any individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his facilities an "air school" or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this State, or any institution of higher learning duly accredited and approved for carrying on collegiate work, while engaged in his duties as such instructor.

(3) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(4) "Air instruction" means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club.

(5) "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while underway and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any

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

(6) "Air navigation" means the operation or navigation of aircraft in the air space over this State, or upon any airport or restricted landing area within this State.

(7) "Air navigation facility" means any facility other than one owned or controlled by the federal government, used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area, and any combination of any or all of such facilities.

(8) "Airport" means any area of land or water, except a restricted landing area, which is designed for the landing and take off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way, whether heretofore or hereafter established.

(9) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off.

(10) "Airport protection privileges" means easements through, or other interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(11) "Air school" means any person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give such instruction. It does not include any public school or university of this State, or any institution of higher learning duly accredited and approved for carrying on collegiate work.

(12) "Civil aircraft" means any aircraft other than a public aircraft.

(13) "Flying club" means any person other than an individual which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

(14) "Municipality" means any county, city, or town of this State, and any other political subdivision, public corporation, authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(15) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this State, or by regulations of the Commission consistent therewith.

(16) "Operation of aircraft" or "operation aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this State.

(17) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(18) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government owned aircraft engaged in carrying persons or property for commercial purposes.

(19) "Restricted area" means any area of land, water, or both, which is used or is made available for the landing and take off of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the Commission.

(20) "State" or "this State" means the State of North Carolina.

(21) "State airway" means a route in the navigable air space over and above the lands or water of this State designated by the Commission as a route suitable for air navigation.

(b) Singular and Plural.—The singular shall include the plural, and the plural the singular. (1945, c. 490, s. 1; 1949, c. 865, s. 3; 1971, c. 936, s. 2.)

Editor's Note. — This section was formerly § 63-48. It was transferred to its present position by Session Laws 1971, c. 936, s. 2, effective Sept. 1, 1971, which also substituted "Chapter" for "article" near the beginning of the first sentence in subsection (a). Former § 63-1 was repealed by Session Laws 1971, c. 936, s. 1, effective Sept. 1, 1971.

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).

Compliance with Federal Statutes and Regulations. — This chapter contemplates full cooperation and compliance with federal statutes and rules and regulations of appropriate federal agencies. Hoyle v. City of Charlotte, 276 N.C. 292, 172 S.E.2d 1 (1970).

§ 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), commented on in 46 N.C.L. Rev. 188 (1967).

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

Editor's Note.—Vance County v. Royster, 271 N.C. 53, 155 S.E.2d 790 (1967), cited in the note below, was commented on in 46 N.C.L. Rev. 188 (1967).

For article on recent developments in North Carolina law of eminent domain, see 48 N.C.L. Rev. 767 (1970).

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).

Cited in Hoyle v. City of Charlotte, 276 N.C. 292, 172 S.E.2d 1 (1970).

§ 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.

§ **63-10**: Repealed by Session Laws 1971, c. 936, s. 1, effective September 1, 1971.

§ 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.**—All crimes, torts, and other wrongs committed by or against an airman or passenger while in flight over this State shall be governed by the laws of this State; and the question whether damage occasioned by or to an aircraft while in flight over this State constitutes a tort, crime or other wrong by or against the owner of such aircraft shall be determined by the laws of this State. (1929, c. 190, s. 7; 1971, c. 936, s. 3.)

Editor's Note.—The 1971 amendment, effective Sept. 1, 1971, substituted "airman" for "aeronaut."

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

§ **63-17. Jurisdiction over contracts.**—All contractual and other legal relations entered into by airmen or passengers while in flight over this State shall have the same effect as if entered into on the land or water beneath. (1929, c. 190, s. 8; 1971, c. 936, s. 3.)

Editor's Note.—The 1971 amendment, effective Sept. 1, 1971, substituted "airmen" for "aeronauts."

§ **63-18. Dangerous flying a misdemeanor.**—Any airman or passenger who, while in flight over a thickly inhabited area or over a public gathering within this State, shall engage in trick or acrobatic flying, or in any acrobatic feat, or shall except while in landing or taking off, fly at such a low level as to disturb the public peace or the rights of private persons in the enjoyment of their homes,

or injure the health, or endanger the persons or property on the surface beneath, or drop any object except loose water or loose sand ballast, shall be guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than one year, or both. (1929, c. 190, s. 9; 1947, c. 1001, s. 2; 1971, c. 936, s. 3.)

Editor's Note.— The 1971 amendment, effective Sept. 1, 1971, substituted "airman" for "aeronaut" near the beginning of this section.

§ 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 4.

Model Airport Zoning Act.

§ **63-29**: Repealed by Session Laws 1971, c. 936, s. 1, effective September 1, 1971.

ARTICLE 6.

Public Airports and Related Facilities.

§ **63-48**: Transferred to § 63-1 by Session Laws 1971, c. 936, s. 2, effective September 1, 1971.

§ 63-49. Municipalities may acquire airports.

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).

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.

Municipality May Award Franchise for Limousine Service to and from Airport.— The provisions of this section and §§ 63-2, 63-49, 63-50, 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).

A municipal corporation, owning and operating a public airport, is authorized to grant an exclusive franchise for the operation of a common carrier limousine service for the transportation of passengers and

their baggage to and from the airport. Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

And, in so doing the municipality is acting in a proprietary capacity. Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

Under Like Rules and Regulations as Pursued by Private Individuals. — When given authority to do so a governmental entity is expected to perform a proprietary function under like rules and regulations as those pursued by private individuals. Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

And a municipality may grant one or more concessions to car rental companies. Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

Or Taxicab Concession.—The authority of a municipality extends to the granting of an exclusive taxicab or limousine or car rental concession at the airport. Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

And may permit them to enter and remain upon its airport premises for the solicitation of business. Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

While Denying Such Privilege to Other Such Companies. — See Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

But it may not forbid the other companies to enter its premises and remain thereon for such time as is reasonably necessary to discharge an outgoing passenger, with his baggage, or to pick up an incoming passenger, with his baggage, pursuant to an actual, previously made contract or a previously received request for such service. Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

A municipal corporation, operating a public airport, or other public transportation terminal, has no more extensive authority to exclude persons or vehicles from the terminal grounds than does a privately owned common carrier operating such a terminal for the use and convenience of its passengers. There is no basis for a distinction in this respect between an airport and a railroad or steamship terminal. Raleigh-Durham Airport Authority v. Stewart, 278 N.C. 227, 179 S.E.2d 424 (1971).

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 of graves; who may disinter, move and reinter; notice; certificate filed; reinterment expenses, due care required.—(a) The State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any church, elec-

tric power or lighting company, or any person, firm, or corporation may effect the disinterment, removal, and reinterment of graves as follows:

(1) By the State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, when it shall determine and certify to the board of county commissioners in the county from which the bodies are to be disinterred that such removal is reasonably necessary to perform its governmental functions and the duties delegated to it by law.

(2) By any church authority in order to erect a new church, parish house, parsonage, or any other facility owned and operated exclusively by such church; in order to expand or enlarge an existing church facility; or better to care for and maintain graves not located in a regular cemetery or burying ground for which such church has assumed responsibility of care and custody.

(3) By an electric power or lighting company when it owns land that is to be used as a reservoir on which graves are located.

(4) By any person, firm or corporation, which owns land on which abandoned cemeteries or burying grounds are located after first securing the consent of the governing body of the town, city or county in which such abandoned cemeteries or burying grounds are situated.

(b) The party effecting the disinterment, removal and reinterment of a grave containing a decedent's remains under the provisions of this Chapter shall, before disinterment, give 30 days written notice of such intention to the next of kin of the decedent, if known or subject to being ascertained by reasonable search and inquiry, and shall cause notice of such disinterment, removal and reinterment to be published at least once per week for four successive weeks in a newspaper of general circulation in the county where such grave is situated and the first publication shall be not less than 30 days before disinterment. Any remains disinterred and removed hereunder shall be reinterred in a suitable cemetery or burial ground.

(c) The party removing or causing the removal of all such graves shall, within 30 days after completion of the removal and reinterment, file with the register of deeds of the county from which the graves were removed and with the register of deeds of the county in which reinterment is made, a written certificate of the removal facts. Such certificate shall contain the full name, if known or reasonably ascertainable, of each decedent whose grave is moved, a precise description of the site from which such grave was removed, a precise description of the site and specific location where the decedent's remains have been reinterred, the full and correct name of the party effecting the removal, and a brief description of the statutory basis or bases upon which such removal or reinterment was effected. If the full name of any decedent cannot reasonably be ascertained, the removing party shall set forth all additional reasonably ascertainable facts about the decedent including birth date, death date, and family name.

A fee of one dollar ($1.00) for each page or portion of page of such certificate of removal facts shall be paid to the register of deeds of each county in which such certificate is filed for registration.

(d) All expenses of disinterment, removal, and acquisition of the new burial site and reinterment shall be borne by the party effecting such disinterment, removal, and reinterment, including the actual reasonable expense of one of the next of kin incurred in attending the same, not to exceed the sum of two hundred dollars ($200.00).

(e) The office of vital statistics of North Carolina shall promulgate regulations effecting the registration and indexing of the written certificate of the removal facts, including the form of that certificate.

(f) The party effecting the disinterment, removal, and reinterment of a decedent's remains under the provisions of this Chapter shall ensure that the site

in which reinterment is accomplished shall be of such suitable dimensions to accommodate the remains of that decedent only and that such site shall be reasonably accessible to all relatives of that decedent, provided that the remains may be reinterred in a common grave where written consent is obtained from the next of kin.

(g) All disinterment, removal and reinterment under the provisions of this Chapter shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county where the disinterment, removal and reinterment take place. If reinterment is effected in a county different from the county of disinterment with the consent of the next of kin of the deceased whose remains are disinterred, then the disinterment and removal shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of the disinterment, and the reinterment shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of reinterment.

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 such remains. Due care shall also be taken to remove, protect and replace all tombstones or other markers, so as to leave such tombstones or other markers in as good condition as that prior to disinterment. Provided that in cases where the remains are to be moved to a perpetual care cemetery or other cemetery where upright tombstones are not permitted, a suitable replacement marker shall be provided.

(h) Nothing contained in this Article shall be construed to grant or confer the power or authority of eminent domain, or to impair the right of the next of kin of a decedent to remove or cause the removal, at his or their expense, of the remains or grave of such decedent. (1919, c. 245; C. S., ss. 5030, 5030(a); Ex. Sess. 1920, c. 46; 1927, c. 23, s. 1; c. 175, s. 1; 1937, c. 3; 1947, cc. 168, 576; 1961, c. 457; 1963, c. 915, s. 1; 1965, c. 71; 1971, c. 797, s. 1.)

Revision of Article.—Session Laws 1971, c. 797, effective July 1, 1971, revised and rewrote this Article, substituting present § 65-13 for former §§ 65-13, 65-14, 65-14.1 and 65-15.

§§ 65-14 to 65-15: Repealed by Session Laws 1971, c. 797, s. 2, effective July 1, 1971.

Revision of Article.—See same catchline in note under § 65-13.

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.

(c) Sale or Conveyance.—The words "sale" or "conveyance," as used herein, unless obviously used in some other sense, shall be deemed to refer to and authorize any form of contract by means of which cemetery transfers or agrees to transfer to purchaser title to or exclusive right of interment in a grave space, family burial plot, mausoleum crypt and columbarium. (1943, c. 644, s. 2; 1967, c. 1009, s. 2; 1971, c. 1149, s. 1.)

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).

The 1971 amendment, effective July 1, 1971, substituted "family burial plot, mausoleum crypt and columbarium" for "or family burial plot," in subsection (c).

Session Laws 1971, c. 1149, s. 9, provides: "This act shall apply to sales made or agreements entered into on and after January 1, 1972."

Only the subsections changed by the amendments are set out.

State Government Reorganization.—The Burial Commissioner was transferred to the Department of Commerce by § 143A-183, enacted by Session Laws 1971, c. 864.

§ 65-20. Reports by cemeteries to Burial Association Commissioner. —Every such public cemetery shall, on or before July 1, 1943, and on or before February 1, 1944, and on February first of each year thereafter, file or cause to be filed with the Burial Association Commissioner of North Carolina, in his office in Raleigh, on forms to be supplied by said Commissioner, a report giving the name of the cemetery, name of all owners thereof, name of managing or directing head, including name of sales manager or agency handling sales, if any, and stating whether or not such cemetery offers, directly or indirectly, or advertises perpetual care of burial lots or spaces sold to the public, together with copy of all forms of agreements offered to prospective purchasers, and shall, with said first report, file a plat of such cemetery, showing, as of date of ratification of this Article, number and location of all lots actually surveyed and permanently staked, together with such other information as may be required under G.S. 65-25, and as may be required by the Burial Association Commissioner of North Carolina.

The Burial Association Commissioner shall levy and collect a penalty of twenty-five dollars ($25.00) for each day after 30 that reports called for in this section are overdue. Penalties collected shall be paid into the administrative fund of the Burial Association Commissioner and used for the general purposes of his office. (1943, c. 644, s. 3; 1955, c. 258, s. 3; 1971, c. 1149, s. 2.)

Editor's Note.—

The 1971 amendment, effective July 1, 1971, substituted "shall" for "may" in the first sentence of the second paragraph.

Session Laws 1971, c. 1149, s. 9, provides: "This act shall apply to sales made or agreements entered into on and after January 1, 1972."

§ 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 fifteen dollars ($15.00) per grave space and niche and forty dollars ($40.00) per mausoleum crypt, sold, said sum to be deposited in perpetual care fund as provided in G.S. 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; 1971, c. 1149, 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.

The 1971 amendment, effective July 1, 1971, substituted "fifteen dollars ($15.00)" for "ten dollars" and inserted "and niche and forty dollars ($40.00) per mausoleum crypt."

Session Laws 1971, c. 1149, s. 9, provides: "This act shall apply to sales made or agreements entered into on and after January 1, 1972."

§ 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 fifteen dollars ($15.00) per grave space and niche and forty dollars ($40.00) for above ground mausoleum 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 or niche or mausoleum 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; 1971, c. 1149, s. 4.)

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.

The 1971 amendment, effective July 1, 1971, in the first sentence, substituted "fifteen dollars ($15.00)" for "ten dollars" and inserted "and niche and forty dollars ($40.00) for above ground mausoleum." In the third sentence the amendment inserted "or niche or mausoleum."

Session Laws 1971, c. 1149, s. 9, provides: "This act shall apply to sales made or agreements entered into on and after January 1, 1972."

§ 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 $150,000.**—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 fifty thousand dollars ($150,000), 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 G.S. 65-23.1 of this Article and invested as therein authorized, and said deposits shall be not less than ten dollars ($10.00) per grave space. (1943, c. 644, s. 10; 1957, c. 529, s. 4; 1967, c. 1009, s. 10; 1971, c. 1149, s. 5.)

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.

The 1971 amendment, effective July 1, 1971, substituted "one hundred fifty thousand dollars ($150,000)" for "one hundred thousand dollars ($100,000.00)," and substituted "ten dollars ($10.00)" for "five dollars ($5.00)."

Session Laws 1971, c. 1149, s. 9, provides: "This act shall apply to sales made or agreements entered into on and after January 1, 1972."

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

§ 65-29. Agreements as to retention of fund if property sold to municipality or church.—In the event of the voluntary purchase by any city or town or church of a cemetery providing perpetual care of lots under this article, it shall be lawful for the cemetery to provide in its agreement with purchasers that in the event of the voluntary purchase by such municipality or church of such cemetery property, such cemetery shall retain for its own any amount accumulated in such perpetual care fund on sale of lots made subsequent to the ratification of this article: Provided, such municipality or church purchasing and accepting a conveyance of said cemetery property shall, as part of the consideration for the making by such cemetery of said conveyance, assume in writing all obligations of such cemetery in connection with the maintenance thereof. In the event of the voluntary purchase by any city, town, or church of a cemetery providing perpetual care of lots under this article, it shall be lawful for the purchaser to assume the trust fund intact, reimbursing said owner of such cemetery for such fund. (1943, c. 644, s. 12; 1969, c. 851, s. 1.)

Editor's Note. — The 1969 amendment inserted "or church" in three places in the first sentence, substituted "shall" for "may" near the middle of the first sentence and made certain other minor changes in that sentence and added the second sentence.

§ 65-29.1. Purchase of cemetery by church.—(a) No perpetual care cemetery may be purchased by a church unless such cemetery adjoins the church cemetery and unless the purchaser is a church which has been established at its present location for at least 25 years immediately prior to said purchase.

(b) For the purposes of this section, a church shall be deemed to include a synagogue, generally recognized religious denomination or religious order, whether incorporated or unincorporated. (1969, c. 851, ss. 2, 3.)

§ 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 directed to suspend said cemetery's license until such failure shall have been corrected. If such records have not been corrected as requested by the Commissioner within 90 days, the Commissioner shall cause prosecution to be commenced in accordance with G.S. 65-31.

No later than 30 days after the final payment has been made by any purchaser of a grave space, the owner, operator or person in charge of such cemetery shall deliver to such purchaser a deed or right of interment for such grave space; and in addition thereto, such owner, operator or person in charge of such cemetery shall, within said 30 days, place in the fund required by G.S. 65-23 and G.S. 65-23.1 the amount required by law.

The Burial Commissioner or his agent shall have authority to inspect and audit any and all records of a perpetual care cemetery to determine compliance with the provisions of this Article. Failure of any person, firm or corporation to permit the Burial Commissioner or his agent to inspect and audit the records of such perpetual care cemetery shall be deemed a violation of this Article. (1943, c. 644, s. 13; 1945, c. 351, s. 1; 1967, c. 1009, s. 12; 1971, c. 1149, ss. 6, 7.)

Editor's Note.—

The 1967 amendment added the second and third paragraphs.

The 1971 amendment, effective July 1, 1971, substituted "directed" for "authorized in his discretion" in the third paragraph, added the second sentence of the third paragraph, and added the fourth and fifth paragraphs.

Session Laws 1971, c. 1149, s. 9, provides: "This act shall apply to sales made or agreements entered into on and after January 1, 1972."

§ 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. Prosecution of violations; revocation and restoration of license; Article part of contracts.—It shall be the duty of the Burial Commissioner to prosecute or cause to be prosecuted all violations of this Article, and upon the conviction of the owner or manager of a public cemetery of such violation, and upon failure of such owner or manager to correct such violation within 30 days thereafter, then, in addition to such other penalties as may result from such conviction, the Burial Commissioner shall revoke the license of such cemetery. Said Commissioner may, in his discretion, upon application by such cemetery, thereafter restore to it its license if such cemetery corrects the violation of this Article, on account of which its owner or manager was convicted, as well

as any other violations thereof known to the Commissioner. This Article shall be written into and become a part, where applicable, of all contracts and certificates issued hereunder. (1943, c. 644, s. 17; 1971, c. 1149, s. 8.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "shall" for "may, in his discretion" following "Burial Commissioner" in the first sentence.

Session Laws 1971, c. 1149, s. 9, provides: "This act shall apply to sales made or agreements entered into on and after January 1, 1972."

§ 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 seventeen thousand dollars ($17,000.00). 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; 1969, c. 1006, s. 1.)

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

The 1969 amendment, effective July 1, 1969, increased the maximum total assessments from $14,000 to $17,000.

ARTICLE 7A.

Funeral and Burial Trust Funds.

§ 65-36.1 Definitions.—As used in this article, unless the context requires otherwise:

(1) "Department" means the State Banking Department;

(2) "Financial institution" means a bank, trust company or savings and loan association authorized by law to do business in this State;

(3) "Preneed burial contract" means a contract, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature

in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument. (1969, c. 187, s. 1.)

Editor's Note.—The act inserting this article is effective July 1, 1969.

§ 65-36.2. Deposit of trust funds.—(a) All payments of money made to any person, partnership, association or corporation upon any agreement or contract, or any series or combination of agreements or contracts, but not including the furnishing of cemetery lots, crypts, niches, mausoleums, grave markers or monuments, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, are held to be trust funds. The person, partnership, association or corporation receiving the payments is declared to be a trustee thereof, and shall deposit all payments in a financial institution. All of the interest, dividends, increases or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained. The trust fund itself shall be solely liable for all taxes on said fund and its interest, dividends, increases and accretions.

(b) All payments made under the agreement, contract or plan are and shall remain trust funds with the financial institution until the death of the person for whose service the funds were paid and until the delivery of all merchandise and full performance of all services called for by the agreement, contract or plan, except where payment is made pursuant to G.S. 65-36.3.

(c) The funds shall not be paid by the financial institution until a certified statement is furnished to the financial institution setting forth that all of the terms and conditions of the agreement have been fully performed by the person, association, partnership, firm or corporation. Unless otherwise specified in the agreement, contract or plan, the said person, partnership, association or corporation shall have no obligation to deliver any merchandise or perform any services for which payment in full has not been deposited in the financial institution, and any amounts deposited which do not constitute payment in full shall be refunded to the estate of the deceased beneficiary of the plan or credited against the cost of merchandise or services contracted for by representatives of the deceased. Any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract or plan shall be paid to the estate of the beneficiary of the agreement, contract or plan.

(d) Subsection (a) of this section does not apply to contracts for funeral service or merchandise sold as burial insurance policies which are regulated by article 24 of chapter 58 of the General Statutes.

(e) The Department shall approve forms for preneed burial contracts. All such contracts must be in writing, and no contract form shall be used without prior approval of the Department. Any use or attempted use of an oral preneed burial contract or any written preneed burial contract in a form not approved by the Department shall be deemed to be a violation of this article by the person selling services or merchandise thereunder. (1969, c. 187, s. 2.)

Prepayment for Burial Services Voluntarily Made. — See opinion of Attorney General to Mr. John R. Tropman, Deputy Commissioner of Banks, 1/20/70.

Preneed Sale of "Garden Mausoleums and Interment Crypts" within Provisions of.—See opinion of Attorney General to Mr. John R. Tropman, Deputy Commissioner, State Banking Commission, 3/30/70.

§ 65-36.3. Refund of deposit.—Within 30 days of receipt of a written demand for refund by any person, partnership or corporation who has paid funds for a preneed funeral service, the financial institution with which such funds have been deposited shall refund to such person, partnership or corporation the entire amount paid together with all interest, dividends, increases or accretions earned on such fund.

After making refund to the person, partnership or corporation pursuant to the provisions of the preceding paragraph and giving notice to the trustee of such payment, the financial institution shall be relieved from further liability to the trustee. (1969, c. 187, s. 3.)

§ 65-36.4. Deposit within thirty days of receipt. — All trust funds mentioned in this article shall be deposited in the name of the trustee, as trustee, within thirty (30) days after receipt thereof, with a financial institution and shall be held together with the interest, dividends, or accretions thereon, in trust, subject to the provisions of this article. The trustee at the time of making deposit shall furnish to the financial institution the name of each payor, and the amount of payment on each account for which the deposit is being made. (1969, c. 187, s. 4.)

§ 65-36.5. Application for license.—(a) No person, firm, partnership, association or corporation may, without first securing from the Department a license, accept and/or hold payments made on preneed burial contracts, except financial institutions as defined in § 65-36.1 (2) hereof. Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Department. Each application shall contain at least the following: The full names and address (both residence and place of business) of the applicant, and every member, officer and director thereof if the applicant is a firm, partnership, association or corporation. Any license issued pursuant to the application shall be valid only at the address stated in the application for the applicant or at a new address approved by the Department.

(b) Upon receipt of the application and payment of a license fee of twenty-five dollars ($25.00), the Department shall issue a license unless it determines that the applicant has made false statements or representations in the application, or is insolvent, or has conducted, or is about to conduct, his business in a fraudulent manner, or is not duly authorized to transact business in this State.

(c) Any person selling a preneed funeral service contract shall collect from each purchaser a service charge of $2.00, and all of which fees so collected shall be remitted by the person collecting same to the State Banking Department at least once each month, and such funds shall be used by the Department in administering this article. (1969, c. 187, s. 5.)

§ 65-36.6. Licensee's books and records.—The licensee shall keep accurate accounts, books, and records in this State of all transactions, copies of all agreements, dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the depositories of the funds. The licensee shall make all books and records pertaining to the trust funds available to the Department for examination. The Department may at any time investigate the books, records, and accounts of the licensee with respect to its trust funds and for that purpose may require the attendance of and examine under oath all persons whose testimony it may require. (1969, c. 187, s. 6.)

§ 65-36.7. Enforcement of article.—The Department shall enforce the provisions of this article and has the power to make investigations, subpoena witnesses, require audits and reports and conduct hearings as to violations of any provisions, and to establish such rules and regulations as are necessary to carry out the provisions of this article. (1969, c. 187, s. 7.)

§ **65-36.8. Penalties.**—Any person wilfully violating the provisions of this article shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00), or shall be imprisoned for not less than ten (10) days nor more than six (6) months, or both. (1969, c. 187, s. 8.)

ARTICLE 8.

Municipal Cemeteries.

§ **65-38:** Repealed by Session Laws 1969, c. 1279.

Chapter 66.

Commerce and Business.

ARTICLE 1.

Regulation and Inspection.

§ 66-10. Failure of junk dealers to keep record of purchases misdemeanor.

Local Modification. — By virtue of Session Laws 1971, c. 33, Onslow should be stricken from the replacement volume.

§ 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 18 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; 1971, c. 1231, s. 1.)

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

The 1971 amendment substituted "18" for "twenty-one" in the last 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 4B.

Safety Features of Trailers.

§ 66-27.5. House trailers to have two doors.—(a) In order to provide greater protection from the dangers of fire, every new house trailer having a body length exceeding thirty-two (32) feet and manufactured or assembled after January 1, 1970, and sold in this State shall, if such house trailer is to be used as a residence or dwelling within this State, be equipped with at least two (2) doors. These doors shall be located in the vicinity of the front and rear rooms of the house trailer. Provided, however, this section shall not apply: To any (i) travel trailer which is factory equipped for the road and designed to be used as a dwelling for travel, recreational or vacation use, if such travel trailer does not exceed thirty-two (32) feet in length: (ii) To any house trailer of any length sold in North Carolina for use in a state other than North Carolina.

(b) It shall be unlawful for any dealer to sell in this State any house trailer manufactured or assembled after January 1, 1970, having a body length exceeding thirty-two (32) feet which does not conform to the specifications set forth in subsection (a). Any dealer who violates this section shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars ($500.00) or imprisoned not exceeding thirty (30) days. (1969, c. 463.)

Editor's Note.—Session Laws 1969, c. 463. adding this section, is effective July 1, 1969.

ARTICLE 5.

Sale of Phonograph Records or Electrical Transcriptions.

§ 66-28. Prohibition of rights to further restrict or to collect royalties on commercial use.

The effect of this section was to eliminate any common-law right to restrict the use of a recording sold for use in this State. Liberty/UA, Inc. v. Eastern Tape Corp., 11 N.C. App. 20, 180 S.E.2d 414 (1971).

"Use," as employed in this section, means the use for which a recording is intended; i.e., the playing of the recording. Thus, under this section, any record sold in commerce for use in this State may be played privately, publicly, and commercially without restriction. It does not follow that the performance contained on the record can be rerecorded onto another record and the rerecording sold in competition with the original producer. Liberty/UA, Inc. v. Eastern Tape Corp., 11 N.C. App. 20, 180 S.E.2d 414 (1971).

ARTICLE 9.

Collection of Accounts.

§ 66-41. Permit from Commissioner of Insurance; misdemeanor to do business without permit; penalty for violation; exception.—No person, firm, corporation or association shall conduct or operate a collection agency or do a collection agency business, as the same is hereinafter defined in this article, until he or it shall have secured a permit therefor as provided in this article. Any

person, firm, corporation or association conducting or operating a collection agency or doing a collection agency business without the permit shall be guilty of a misdemeanor for each day that the unlawful business is conducted. Any officer or agent of any person, firm, corporation or association, who shall personally and knowingly participate in any violation of this article shall likewise be guilty of a misdemeanor. Provided, however, that nothing in this section shall be construed to require a regular employee of a duly licensed collection agency in this State to procure a collection agency permit. (1931, c. 217, s. 1; 1943, c. 170; 1959, c. 1194, s. 1; 1969, c. 906, s. 1.)

Editor's Note.—
The 1969 amendment, effective July 1, 1969, rewrote this section.

§ 66-41.1. Application to Commissioner for permit.—Any person, firm, corporation or association desiring to secure a permit as is provided by G.S. 66-41, shall make application to the Commissioner of Insurance upon such form as the Commissioner may provide for each location at which such person, firm, corporation or association desires to carry on the business hereinafter defined, and shall submit with such application any and all information which the Commissioner may require to assist him in determining the financial condition, business integrity, method of operation, and protection of the public offered by the person, firm, corporation or association filing the application. Information required shall include evidence of good moral character, that no unsatisfied judgments are against the person, firm, corporation or association filing the application and a financial statement showing that the applicant's assets exceed liabilities. All information submitted shall be sworn to by the responsible officer, member of the firm, or individual, as in each case necessary, and the Commissioner shall have the right to require any and all additional information which, in his judgment, may assist him in determining whether or not the applicant is entitled to the permit sought. (1931, c. 217, s. 2; 1943, c. 170; 1959, c. 1194, s. 2; 1969, c. 906, s. 2.)

Editor's Note. — Prior to Session Laws 1969, c. 906, effective July 1, 1969, the subject matter of the above section was covered by § 66-42.

§ 66-42. Definition of collection agency and collection agency business.—"Collection agency" means and includes all persons, firms, corporations and associations directly or indirectly engaged in soliciting, from more than one person, firm, corporation or association, claims of any kind owed or due or asserted to be owed or due the solicited person, firm, corporation or association, and all persons, firms, corporations and associations directly or indirectly engaged in asserting, enforcing or prosecuting those claims.

"Collection agency" shall include any person, firm, corporation or association who shall procure a listing of debtors from any creditor and who shall sell such listing or otherwise receive any fee or benefit from collections made on such listing.

"Collection agency" does not mean or include

(1) Regular employees of a single creditor,
(2) Banks,
(3) Trust companies,
(4) Savings and loan associations,
(5) Building and loan associations,
(6) Duly licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or are in connection with the brokers' or agents' regular real estate business,
(7) Express and telegraph companies subject to public regulation and supervision,
(8) Attorneys at law handling claims and collections in their own name and not operating a collection agency under the management of a layman,

(9) Any person, firm, corporation or association handling claims, accounts or collections under an order or orders of any court, or

(10) A person, firm, corporation or association which, for valuable consideration, purchases accounts, claims, or demands of another and then, in its own name, proceeds to assert or collect the accounts, claims or demands.

(11) "Collection agency" shall not include any person, firm or corporation who for a fee and on behalf of a creditor shall, in its own name, write a letter or series of letters to a debtor on behalf of the creditor if such person, firm or corporation does not collect any money from any debtor nor hold itself out as being authorized to receive payment of all or any part of such debt.

(12) "Collection agency" shall not include any person, firm, corporation or association attempting to collect or collecting claims of a business or businesses owned wholly or substantially by the same person or persons operating such collection agency. (1969, c. 906, s. 3.)

Editor's Note. — The above section was enacted by Session Laws 1969, c. 906, effective July 1, 1969. The subject matter of former § 66-42 is now covered by § 66-41.1.

§ 66-47. Violation of article or regulations a misdemeanor.—Any person, firm, corporation or association who shall violate the provisions of G.S. 66-41, or who shall engage in the business defined in this article after failing to renew permit, or after permit has been cancelled as herein provided, or who shall fail or refuse to furnish the information required by the Commissioner, or shall fail to observe the regulations promulgated by the Commissioner pursuant to this article, shall be guilty of a misdemeanor punishable in the discretion of the court. (1931, c. 217, s. 7; 1969, c. 906, s. 4.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote this section.

§ 66-49. All collection agencies to identify themselves in correspondence and street location.—All collection agencies licensed under this article to do the business of a collection agency in this State, shall on and after July 1, 1969, in all correspondence with debtors use stationery or forms which contain the true name of such collection agency in bold type. Furthermore, all correspondence to debtors shall contain the precise street address and mailing address of such agency and shall contain the name or names of an employee of such agency.

The permit to engage in the business of a collection agency shall at all times be prominently displayed in each office of the person, firm, corporation or association to whom or to which the permit is issued, and the number of said permit shall be printed in bold type on all letterheads, stationery and forms used by the person, firm, corporation or association holding said permit. (1931, c. 217, s. 9; 1969, c. 906, s. 5.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote this section, which formerly excepted attorneys at law and purely local agencies from the application of this article.

ARTICLE 9A.

Private Detectives.

§ 66-49.1. License required.

Opinions of Attorney General. — Mr. Charles Dunn, Director, State Bureau of Investigation, 10/17/69.

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

(1) "Bureau" means the State Bureau of Investigation.

(2) "Detective business" means:

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

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

b. Engaging in business as or accepting employment as a private patrol or guard service for consideration on a private contractual basis and not as an employee.

b1. Engaging in the operation of a polygraph device, for which the Director is hereby authorized to establish standards for qualification, including standards as to educational background, special training or experience.

"Detective business" shall not include:

c. Insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment of claims against an insurance company;

d. Persons employed exclusively and regularly by only one employer in connection with the affairs of such employer only and where there exists an employer-employees relationship unless the employer is in the detective business;

e. An officer or employee of the United States or of this State or any political subdivision thereof, while such officer or employee is engaged in the performance of his official duties and within the course and scope of his employment with the United States, the State, or any political subdivision;

f. A person engaged in the business of obtaining and furnishing information as to the financial rating of persons; or

g. An attorney-at-law licensed to practice in North Carolina, or his agent.

(3) "Director" means the Director of the State Bureau of Investigation.

(4) "Person" includes individuals, firms, associations, companies, partnerships and corporations. (1961, c. 782; 1971, c. 814, ss. 1-3.)

Editor's Note. — The 1971 amendment, effective Oct. 1, 1971, added paragraph b1, added "unless the employer is in the detective business" at the end of paragraph d, and added "and within the course and scope of his employment with the United States, the State, or any political subdivision," at the end of paragraph e, all in subdivision (2).

§ 66-49.3. Application for license; investigation; examination; issuance; grounds for refusal.—(a) Any person, firm, or corporation desiring

to carry on a detective business in this State shall make a verified application in writing to the Director of the State Bureau of Investigation for a license therefor.

(b) The application shall include:

(1) The full name and business address of the applicant;

(2) The name under which the applicant intends to do business;

(3) A statement as to the general nature of the business in which the applicant intends to engage;

(4) If an applicant is a person other than an individual, the full name and address and verified signatures of each of its partners, officers and directors and its business manager, if any;

(5) The names of not less than three unrelated and disinterested persons, as references of whom inquiry can be made as to the character, standing and reputation of the person, firm or corporation making the application. At least one of such persons must be a judge or a solicitor of a court of record in the county of applicant's last-known residence and one such person must be a municipal chief of police or county sheriff in the county of the applicant's last-known residence; and

(6) Such other information, evidence, statements or documents as may be required by the Director.

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

(1) That he is at least 18 years of age;

(2) That he is a citizen of the United States;

(3) That he is of good moral character and temperate habits;

(4) That he has had at least two years' experience in private investigative work or as an insurance adjuster or, in lieu thereof, at least one year's experience as a member of the Federal Bureau of Investigation, the State Bureau of Investigation, any municipal police department in this State or any county sheriff's department in this State;

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

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

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

(1) Committed some act which if committed by a licensee would be grounds for the suspension or revocation of a license under this Article;

(2) Committed an act constituting dishonesty or fraud;

(3) A reputation for a bad moral character, intemperate habits or a bad reputation for truth, honesty and integrity;

(4) Been convicted of a felony or some other crime involving moral turpitude or involving the illegal use, carrying or possession of a dangerous weapon;

(5) Been refused a license under this Article or has had a license revoked;

(6) Been an officer, director, partner or manager of any person who has been refused a license under this Article or whose license has been revoked; or

(7) Knowingly made any false statement in his application. (1961, c. 782; 1963, c. 1154, s. 1; 1971, c. 814, ss. 4-6; c. 1231, s. 1.)

Editor's Note.—

The first 1971 amendment, effective Oct. 1, 1971, inserted "a verified" after "shall make" in subsection (a), inserted "and verified signatures" after "address" in subsection (b)(4), and inserted "reputation for a" after "A" at the beginning of subsection (e)(3).

The second 1971 amendment substituted "18" for "21" in subsection (c)(1).

§ 66-49.4. Form of license; term; renewal; posting; not assignable; trainee permits.

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

(b1) The fee for a license shall be two hundred dollars ($200.00). All fees collected pursuant to this section shall be expended, under the direction of the Director, for the purposes of defraying the expenses of administering this Article. (1971, c. 814, ss. 7, 8.)

Editor's Note.—

The 1971 amendment, effective Oct. 1, 1971, substituted "two years" for "one year" near the beginning of the first sentence of subsection (b), and in the same sentence substituted "two years" for "next" and inserted "for a two-year period" after "issuance thereof." The 1971 amendment also added subsection (b1).

Only the subsections affected by the amendment are set out..

§ 66-49.5A. Registration of persons employed.—All persons employing other persons licensed by this Article shall, within 10 days of the beginning of employment of a person, furnish the Director with the name, photograph and fingerprints of the employee and shall, within 10 days of the termination of employment of any person, advise the Director in writing of the name of the person whose employment was terminated. (1971, c. 814, s. 9.)

Editor's Note. — Session Laws 1971, c. 814, s. 15, makes the act effective Oct. 1, 1971.

§ 66-49.6. Suspension or revocation of licenses; appeal.

(c) The revocation or suspension of a license as provided in subsection (a) shall be in writing, signed by the Director, stating the grounds upon which revocation order is based, and the aggrieved person shall have the right to appeal from such an order as provided in Chapter 150 of the General Statutes except that the appeal shall be filed in Superior Court of Wake County. (1961, c. 782; 1963, c. 1154, s. 3; 1971, c. 814, s. 10.)

Editor's Note.—

The 1971 amendment, effective Oct. 1, 1971, inserted "or suspension" after "revocation" in subsection (c), substituted "as provided in Chapter 150 of the General Statutes except that the appeal shall be filed in Superior Court of Wake County" for the language beginning "within twenty (20) days" in that subsection, and deleted the former second and third sentences.

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

§ 66-49.7. Prohibited acts.

(e) Every licensee shall file in writing with the Bureau the address of each of his branch offices, if any, within 10 days after the establishment, closing or changing of the location of any branch office. The operator or manager of any branch office shall be a licensed detective.

(f) No licensee shall hold a commission as a company or special police. The issuance of such a commission to a licensee shall automatically revoke the license

of the licensee without the necessity of a hearing. (1961, c. 782; 1971, c. 814, ss. 11-13.)

Editor's Note. — The 1971 amendment, effective Oct. 1, 1971, added the last sentence to subsection (e) and added subsection (f). Only the subsections affected by the amendment are set out.

ARTICLE 10.

Fair Trade.

§ 66-50. Title of Article.

Editor's Note.—

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

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

This Article shall not apply to any prices offered in connection with or contracts or purchases respecting pesticides, as defined by G.S. 143-460. (1937, c. 350, s. 7; 1971, c. 832, s. 2.)

Editor's Note.—The 1971 amendment, effective Oct. 1, 1971, added the second paragraph.

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."

§ 66-70: Repealed by Session Laws 1969, c. 751, s. 45, effective October 1, 1969.

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, Moore, 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; 1969, c. 502.)

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.

The 1969 amendment inserted the county of Moore.

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), commented on in 45 N.C.L. Rev. 1118 (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.

In the Matter of Truitt, 269 N.C. 249, 152 S.E.2d 74 (1967), cited in the note below, was commented on in 45 N.C.L. Rev. 1118 (1967).

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 expendi-

ture 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.

Opinions of Attorney General. — Mr. John R. Parker, Sampson County Attorney, 9/17/69.

Authorization to Spend Surplus Dog Damage Fund for Claims Arising Prior to Accumulation of Surplus.—See opinion of Attorney General to Mr. John R. Parker, Sampson County Attorney, 2/4/70.

§ 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; Onslow, Pitt and Wayne: 1971, c. 16.

Chapter 68.

Fences and Stock Law.

ARTICLE 1.

Lawful Fences.

§§ **68-1, 68-2**: Repealed by Session Laws 1969, c. 691.

§§ **68-3, 68-4**: Repealed by Session Laws 1971, c. 741, s. 2, effective October 1, 1971.

§ **68-5**: Repealed by Session Laws 1969, c. 619.

ARTICLE 2.

Division Fences.

§§ **68-6 to 68-14**: Repealed by Session Laws 1971, c. 741, s. 2, effective October 1, 1971.

ARTICLE 3.

Livestock Law.

§ **68-15. Term "livestock" defined.**—The word "livestock" in this Chapter shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats and swine. (Code, s. 2822; Rev., s. 1681; C. S., s. 1841; 1971, c. 741, s. 1.)

Editor's Note. — Session Laws 1971, c. 741, effective Oct. 1, 1971, revised and rewrote this Article, substituting present §§ 68-15 to 68-25 for former §§ 68-15 to 68-41. Among other changes, the 1971 act did away with the distinction between "stock law" and "no stock law" territory and eliminated provisions for elections on the question of "stock law" or "no stock law," and made the Article applicable throughout the State. The 1971 act also repealed the remaining sections of Article 1, §§ 68-3 and 68-4, and Article 2, §§ 68-6 to 68-14. Where appropriate, the historical citations to the former sections of this Article have been added to the corresponding sections of the Article as revised.

§ **68-16. Allowing livestock to run at large forbidden.**—If any person shall allow his livestock to run at large, he shall be guilty of a misdemeanor. (Code, s. 2811; 1889, c. 504; Rev., s. 3319; C. S., s. 1849; 1971, c. 741, s. 1.)

Duty to Restrain Stock. — The person having charge of an animal is under the legal duty to exercise the ordinary care and foresight of a reasonably prudent person in keeping the animal in restraint. Sutton v. Duke, 7 N.C. App. 100, 171 S.E.2d 343 (1969).

Liability of Animal's Keeper Rests on Question of Negligence.—The keeper of a pony, mule or other animal is liable under this section for negligently permitting such animal to escape and go upon public highways in the event they do damage to travelers or others lawfully thereon. The liability of the keeper rests upon the question of whether the keeper is guilty of negligence in permitting such animal to escape. The same rules as to what is or is not negligence in ordinary situations apply. Sutton v. Duke, 7 N.C. App. 100, 171 S.E.2d 343 (1969).

§ 68-17. Impounding livestock at large; right to recover costs and damages.—Any person may take up any livestock running at large and impound the same; and such impounder may recover from the owner the reasonable costs of impounding and maintaining the livestock as well as damages to the impounder caused by such livestock, and may retain the livestock, with the right to use with proper care until such recovery is had. (Code, s. 2186; Rev., s. 1679; C. S., s. 1850; 1951, c. 569; 1971, c. 741, s. 1.)

§ 68-18. Notice and demand when owner known.—If the owner of impounded livestock is or becomes known to the impounder, actual notice of the whereabouts of the impounded livestock must be immediately given to the owner and the impounder must then make demand upon the owner of the livestock for the costs of impoundment and the damages to the impounder, if any, caused by such livestock. (Code, s. 2817; Rev., s. 1680; C. S., s. 1851; 1971, c. 741, s. 1.)

§ 68-19. Determination of damages by selected landowners or by referee.—If the owner and impounder cannot agree as to the cost of impounding and maintaining such livestock, as well as damages to the impounder caused by such livestock running at large, then such costs and damages shall be determined by three disinterested landowners, one to be selected by the owner of the livestock, one to be selected by the impounder and a third to be selected by the first two. If within 10 days a majority of the landowners so selected cannot agree, or if the owner of the livestock or the impounder fails to make his selection, or if the two selected fail to select a third, then the clerk of superior court of the county where the livestock is impounded shall select a referee. The determination of such costs and damages by the landowners or by the referee shall be final. (Code, s. 2186; Rev., s. 1679; C. S., s. 1850; 1951, c. 569; 1971, c. 741, s. 1.)

§ 68-20. Notice of sale and sale where owner fails to redeem or is unknown; application of proceeds.—If the owner fails to redeem his livestock within three days after the notice and demand as provided in G.S. 68-18 is received or within three days after the determination of the costs and damages as provided in G.S. 68-19, then, upon written notice fully describing the livestock, stating the place, date, and hour of sale posted at the courthouse door and three or more public places in the township where the owner resides, and after 10 days from such posting, the impounder shall sell the livestock at public auction. If the owner of the livestock is not known to the impounder, then, upon written notice fully describing the livestock, stating the place, date, and hour of sale posted at the courthouse door and three public places in the township where the livestock is impounded, and after 20 days from such posting, the impounder shall sell the livestock at public auction. The proceeds of any such public sale shall be applied to pay the reasonable costs of impounding and maintaining the livestock and the damages to the impounder caused by the livestock and the balance, if any, shall be paid to the owner of the livestock, if known, or, if the owner is not known, then to the school fund of the county where the livestock was impounded. (Code, s. 2817; Rev., s. 1680; C. S., s. 1851; 1971, c. 741, s. 1.)

§ 68-21. Illegally releasing or receiving impounded livestock misdemeanor.—If any person wilfully releases any lawfully impounded livestock without the permission of the impounder or receives such livestock knowing that it was unlawfully released, he shall be guilty of a misdemeanor. (Code, s. 2819; 1889, c. 504; Rev., s. 3310; C. S., s. 1853; 1971, c. 741, s. 1.)

§ 68-22. Impounded livestock to be fed and watered.—If any person shall impound or cause to be impounded any livestock and shall fail to supply to the livestock during the confinement a reasonably adequate quantity of good and wholesome feed and water, he shall be guilty of a misdemeanor. (1881, c. 368, s. 3; Code, s. 2484; 1891, c. 65; Rev., s. 3311; C. S., s. 1854; 1971, c. 741, s. 1.)

§ 68-23. Right to feed impounded livestock; owner liable.—When any livestock is impounded under the provisions of this Chapter and remains without reasonably adequate feed and water for more than 24 hours, any person may lawfully enter the area of impoundment to supply the livestock with feed and water. Such person shall not be liable in trespass for such entry and may recover of the owner or, if the owner is unknown, of the impounder of the livestock, the reasonable costs of the feed and water. (1881, c. 368, s. 4; Code, s. 2485; Rev., s. 1682; C. S., s. 1855; 1971, c. 741, s. 1.)

§ 68-24. Penalties for violation of this Article. — Any person found guilty of violating any of the provisions of G.S. 68-16, G.S. 68-21 or G.S. 68-22 shall be punished by a fine not exceeding two hundred dollars ($200.00) or imprisonment not exceeding 30 days or both. (1971, c. 741, s. 1.)

§ 68-25. Domestic fowls running at large after notice.—If any person shall permit any turkeys, geese, chickens, ducks or other domestic fowls to run at large on the lands of any other person while such lands are under cultivation in any kind of grain or feedstuff or while being used for gardens or ornamental purposes, after having received actual or constructive notice of such running at large, he shall be guilty of a misdemeanor.

If it shall appear to any magistrate that after three days' notice any person persists in allowing his fowls to run at large in violation of this section and fails or refuses to keep them upon his own premises, then the said magistrate may, in his discretion, order any sheriff or other officer to kill the fowls when they are running at large as herein provided. (C. S., s. 1864; 1971, c. 741, s. 1.)

§§ **68-26 to 68-41**: Repealed by Session Laws 1971, c. 741, s. 2, effective October 1, 1971.

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 1.

Investigation of Fires and Inspection of Premises.

§ 69-1. Fires investigated; reports; records. — The Commissioner of Insurance and the chief of the fire department, or chief of police where there is no chief of fire department, in municipalities and towns, and the county fire marshal and the sheriff of the county where such fire occurs outside of a municipality, are hereby authorized to investigate the cause, origin, and circumstances of every fire occurring in such municipalities or counties in which property has been destroyed or damaged, and shall specially make investigation whether the fire was the result of carelessness or design. A preliminary investigation shall be made by the chief of fire department or chief of police, where there is no chief of fire department in municipalities, and by the county fire marshal and the sheriff of the county where such fire occurs outside of a municipality, and must be begun within three days, exclusive of Sunday, of the occurrence of the fire, and the Commissioner of Insurance shall have the right to supervise and direct the investigation when he deems it expedient or necessary. The officer making the investigation of fires shall forthwith notify the Commissioner of Insurance, and must within one week of the occurrence of the fire furnish to the Commissioner a written statement of all the facts relating to the cause and origin of the fire, the kind, value, and ownership of the property destroyed, and such other information as is called for by the blanks provided by the Commissioner. The Commissioner of Insurance shall keep in his office a record of all fires occurring in the State, together with all facts, statistics, and circumstances, including the origin of the fires, which are determined by the investigations provided for by this article. This record shall at all times be open to public inspection. (1899, c. 58; 1901, c. 387; 1903, c. 719; Rev., s. 4818; C. S., s. 6074; 1943, c. 170; 1969, c. 894.)

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

Editor's Note. — The 1969 amendment inserted "the county fire marshal and" in the first and second sentences.

State Government Reorganization.—The fire investigators were transferred to the Department of Justice by § 143A-52, enacted by Session Laws 1971, c. 864.

§ 69-4. Inspection of premises; dangerous material removed. — The Commissioner of Insurance, or the chief of fire department or chief of police where there is no chief of fire department, or the city or county building inspector, electrical inspector, heating inspector, or fire prevention inspector has the right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises in their jurisdiction. When any of such officers find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such building or premises they shall order the same to be removed or remedied, and this order shall be forthwith complied with by the

owner or occupant of such buildings or premises. The owner or occupant may, within twenty-four hours, appeal to the Commissioner of Insurance from the order, and the cause of the complaint shall be at once investigated by his direction, and unless by his authority the order of the officer above named is revoked it remains in force and must be forthwith complied with by the owner or occupant. The Commissioner of Insurance, fire chief, or building inspector, electrical inspector, heating inspector, or fire prevention inspector shall make an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction upon complaint of any person having an interest in such building or premises or property adjacent thereto. The Commissioner may, in person or by deputy, visit any municipality or county and make such inspections alone or in company with the local officer. (1899, c. 58, s. 4; 1901, c. 387, s. 4; 1903, c. 719; Rev., s. 4821; C. S., s. 6077; 1943, c. 170; 1969, c. 1063, s. 3.)

Editor's Note. — The 1969 amendment substituted "the city or county building inspector, electrical inspector, heating inspector, or fire prevention inspector" for "local inspector of buildings in municipalities where such officer is elected or appointed" in the first sentence, deleted the former second sentence, relating to annual inspections by municipal officers, substituted "building inspector, electrical inspector, heating inspector, or fire prevention inspector" for "fire committee" in the fourth sentence, inserted "or county" in the present last sentence and deleted the former last sentence, relating to the salary or fees of the local inspector.

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 or the city or county building inspector, electrical inspector, heating inspector, or fire prevention inspector 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; 1969, c. 1063, s. 4.)

Editor's Note.—The 1969 amendment inserted "or the city or county building inspector, electrical inspector, heating inspector, or fire prevention inspector" in the first sentence.

ARTICLE 3.

State Volunteer Fire Department.

§ 69-16. Organization.

State Government Reorganization.—The State Volunteer Fire Department was transferred to the Department of Insurance by § 143A-79, enacted by Session Laws 1971, c. 864.

§ 69-23. Rights and privileges of firemen; liability of municipality.

Cited in Bland v. City of Wilmington, 278 N.C. 657, 180 S.E.2d 813 (1971).

ARTICLE 3A.

Rural Fire Protection Districts.

§ 69-25.1. Election to be held upon petition of voters.

Local Modification. — Scotland: 1969, c. 855 (garnishment and attachment and lien for collection of delinquent fire protection service charges).

Opinions of Attorney General. — Mr. Harley B. Gaston, Jr., Gaston County Attorney, 7/8/69.

§ 69-25.5. Methods of providing fire protection.

Opinions of Attorney General. — Mr. James R. Sugg, Craven County Attorney, 11/12/69.

§ 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), substi-

tuted "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.

§ 69-25.16. Exclusion from rural fire protection districts.—There shall be excluded from any rural fire protection district, and the provisions of this Article shall not apply to, an electric generating plant, together with associated land and facilities, which provides electricity to the public; provided that this section shall not apply to any rural fire protection district in existence on May 1, 1971. (1971, c. 297.)

ARTICLE 4.

Hotels; Safety Provisions.

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

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

(1969, c. 1063, s. 5.)

Editor's Note.—

The 1969 amendment substituted "Type III, IV, V, or VI" for "B, C, D or E" near the beginning of subsection (a) and "Type I or II" for "A or A1" near the beginning of subsection (b).

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

ARTICLE 1.

General Provisions.

§ 71-1. Cherokee Indians of Robeson County; rights and privileges.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 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.)

ARTICLE 2.

Commission of Indian Affairs.

§ 71-13. Creation; name.—There is hereby created and established a commission to be known as the North Carolina State Commission of Indian Affairs. (1971, c. 1013, s. 1.)

§ 71-14. Purposes for creation.—The purposes of the Commission shall be to deal fairly and effectively with Indian affairs; to bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina; to provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships; to assist Indian communities in social and economic development; and to promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to native Americans. (1971, c. 1013, s. 2.)

§ 71-15. Duties; use of funds.—It shall be the duty of the Commission to study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs; to investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs; to confer with appropriate officials of local, State, and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina; to cooperate with and secure the assistance of the local, State, and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs; to review all proposed or pending State legislation, and amendments to existing State legislation affecting Indians in North Carolina; to conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the Commission; to study the existing status of recognition of all Indian groups, tribes, and communities presently existing in the State of North Carolina, and to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups, and to initiate procedures for their recognition by the federal government; to employ and fix the compensation of an Executive Director of the Commission and such supporting staff as may be required to carry out the responsibilities of the Commission; to petition the State General Assembly for funds to effectively operate the Commission's affairs and to expend funds in compliance with State regulations; to make legislative recommendations; to make and publish reports of findings and recommendations. (1971, c. 1013, s. 3.)

§ 71-16. Membership; term of office; chairman; compensation.—(a) The State Commission of Indian Affairs shall consist of the Speaker of the House of Representatives, the Lieutenant Governor, the Director of the Department of Social Services, Director of the State Employment Security Commission, Director of the State Board of Health, the Director of The State Conservation and Development Department, and the Commissioner of Labor. There shall be 12 Indian members to be selected by tribal or community consent; three each from the four following major groups of North Carolina Indians: the Lumbee, the Haliwa, the Waccamaw Siouan, and the Coharie tribes. In addition, at the discretion of the Commission and at such time as any other presently unrecognized group or groups of Indians residing in North Carolina are recognized by the Commission, the Commission may seat up to three representatives from such a newly recognized group who demonstrate their authority to speak in the interest of the group they represent.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms, except that at the first election of Commission members by tribes and groups, one member from each tribe or group shall be elected for a one-year term, one member from each tribe or group to a two-year term, and one member from each tribe or group to a three-year term. Thereafter, commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The Commission shall elect its own secretary.

(c) Commission members who are seated by virtue of their office within the State government shall not be compensated by the Commission for their services to the Commission. All other Commission members shall be compensated at the same rate as other statutory commission members and pursuant to prevailing State regulations. Travel reimbursement shall be in accord with State regulations. (1971, c. 1013, s. 4.)

§ 71-17. Executive Director; employees.—The Commission may, subject to legislative or other funds that would accrue to the Commission, employ an Executive Director to carry out the day-to-day responsibilities and business of the Commission. The Executive Director, also subject to legislative or other funds that would accrue to the Commission, may hire additional staff and consultants to assist in the discharge of his responsibilities, as determined by the Commission. The Executive Director shall not be a member of the Commission, and should be of Indian extraction. (1971, c. 1013, s. 5.)

§ 71-18. Meetings; quorum; proxy vote.—(a) The Commission shall meet quarterly, and at any other such time that it shall deem necessary. Meetings may be called by the chairman or by a petition signed by a majority of the members of the Commission. Ten days' notice shall be given in writing prior to the meeting date.

(b) Two thirds of the Indian members of the Commission and two members by virtue of their office within State government must be present to constitute a quorum.

(c) Proxy vote shall not be permitted. (1971, c. 1013, s. 6.)

§ 71-19. Reports.—The Commission shall prepare a written annual report giving an account of its proceedings, transactions, findings, and recommendations. This report shall be submitted to the Governor and the legislature. The report

will become a matter of public record and will be maintained in the State Historical Archives. It may also be furnished to such other persons or agencies as the Commission may deem proper. (1971, c. 1013, s. 7.)

§ **71-20. Fiscal records; bond required.** — (a) Fiscal records shall be kept by the Executive Director or his designee, if applicable, otherwise by the Commission chairman and will be subject to annual audit by a certified public accountant. The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report.

(b) Commission members or employees of the Commission who are responsible for receiving and disbursing Commission funds shall be bonded in an amount satisfactory to the Commission, but not less than fifty thousand dollars ($50,000). (1971, c. 1013, s. 8.)

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 4.

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

§ 72-36. Registration of guest.

Cited in Wheeler v. Goodman, 306 F. Supp. 58 (W.D.N.C. 1969).

§ 72-39. Inducing female to enter tourist camps, etc., for immoral purpose made misdemeanor.

Cited in Wheeler v. Goodman, 306 F. Supp. 58 (W.D.N.C. 1969).

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).

§ 72-48. Violation of article a misdemeanor.

Editor's Note.—

For comment as to warrants required for administrative health inspections, see 4 Wake Forest Intra. L. Rev. 117 (1968).

Chapter 73.

Mills.

ARTICLE 4.

Recovery of Damages for Erection of Mill.

§ 73-28. Final judgment; costs and execution.

Editor's Note. — For article on remedies for trespass to land in North Carolina, see 47 N.C.L. Rev. 334 (1969).

Chapter 74.

Mines and Quarries.

Article 2.

Inspection of Mines and Quarries.

§ 74-15. Commissioner of Labor to inspect mines and quarries.

Editor's Note.—For note on "Governmental Regulation of Surface Mining Activities," see 46 N.C.L. Rev. 103 (1967).

Article 4.

Adjustment of Conflicting Claims.

§ 74-32. Liability for damage for trespass.

Editor's Note.—For article on remedies for trespass to land in North Carolina, see 47 N.C.L. Rev. 334 (1969).

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 ot 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 entities 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 com-

mission 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 legislature 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.)

Editor's Note.—For note on "Governmental Regulation of Surface Mining Activities," see 46 N.C.L. Rev. 103 (1967).

§ 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.)

State Government Reorganization.—The administration of the Interstate Mining Compact was transferred to the Department of Natural and Economic Resources by § 143A-127, enacted by Session Laws 1971, c. 864.

ARTICLE 6.

Mining Registration.

§ **74-39. Short title.**—This article may be known and cited as "The Mining Registration Act of 1969." (1969, c. 1204, s. 1.)

§ **74-40. Definitions.**—Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(1) "Council" means the mining council created by G.S. 74-38.

(2) "Department" means the Department of Conservation and Development.

(3) "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. (1969, c. 1204, s. 2.)

§ **74-41. State Mining Engineer.**—The position of State Mining Engineer is hereby created within the Division of Mineral Resources of the Department of Conservation and Development. The State Mining Engineer shall be appointed by the Director of the Department, on recommendation of the State Geologist, and shall be suitably qualified by reason of education and experience in the field of mining engineering. He shall work under the immediate supervision of the State Geologist and shall carry out the duties assigned herein. (1969, c. 1204, s. 3.)

§ **74-42. Duties of State Mining Engineer.**—The State Mining Engineer shall administer the provisions for registration of mining operations contained in this article. In addition, he shall furnish staff assistance to the mining council as it prepares its recommendations called for by this article. In this capacity, he shall engage in such study and research concerning mining operations and their regulation in this State and elsewhere as may be required to furnish the council with a thorough factual basis for its recommendations. (1969, c. 1204, s. 4.)

§ **74-43. Mining registration.**—Prior to March 31, 1970, the owner or operator of every mining operation in the State shall secure a registration certificate from the State Mining Engineer. Such a certificate shall be issued only where the applicant shall have furnished the following information concerning the mining operation:

(1) Complete name of owner and operator of the mining operation, together with addresses and telephone numbers;

(2) Number of employees of the mining operation and the principal officers;

(3) Maps, based on criteria developed by the Mining Engineer and acceptable to the mining council, to show property lines or affected area of the mining operation, location of any processing plants, extent of pits and stockpile areas and overburden disposal areas;

(4) Number of years operation has existed and estimate of number of years it is expected to continue;

(5) Summary of present and proposed conservation and land reclamation plans and procedures, if any.

The owner or operator of any mining operation which begins subsequent to March 31, 1970, shall secure such a registration certificate no later than thirty days after beginning operations.

Provided, however, that the mining council may by regulation exempt from registration mining operations that involve or affect surface areas of less than one-quarter acre in extent, if the council finds that it is not administratively feasible to register such mining operations and that the exemption of such mining operations will not substantially impair the purposes of this article. (1969, c. 1204, s. 5.)

§ **74-44. Mining council.**—(a) The mining council, in addition to its duties under the Interstate Mining Compact as specified in G.S. 74-37 and 74-38, shall develop with the assistance of the State Mining Engineer recommendations to the 1971 General Assembly for legislation under which mining operations in the State shall be regulated. Such recommended legislation shall include provisions (i) designating or creating a State agency to regulate the mining industry, (ii) specifying the legal responsibility for reclamation of mined-out land, and (iii) creating a system of licensing of mining operations sufficient to insure adequate conservation and land reclamation measures in connection with such operations, in addition to such other provisions as the council shall deem necessary and appropriate.

(b) The mining council may adopt and modify from time to time rules and regulations consistent with this article to implement the provisions of this article. All such rules and regulations, and modifications thereof, shall be filed with the Secretary of State as required by article 18 of chapter 143 of the General Statutes. (1969, c. 1204, s. 6.)

§ **74-45. Violations.**—Any person who shall be adjudged to have violated any provision of this article or any rule or regulation of the mining council adopted hereunder shall be guilty of a misdemeanor, punishable upon conviction by a fine of not exceeding fifty dollars ($50.00) or by imprisonment for not exceeding thirty days, or by both such fine and imprisonment. (1969, c. 1204, s. 7.)

ARTICLE 7.

The Mining Act of 1971.

§ **74-46. Title.**—This Article may be known and cited as "The Mining Act of 1971." (1971, c. 545, s. 1.)

§ **74-47. Findings.**—The General Assembly finds that the extraction of minerals by mining is a basic and essential activity making an important contribution to the economic well-being of North Carolina and the nation. Furthermore, it is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of certain surface mining operations precludes complete restoration of the land to its original condition. However, it is possible to conduct mining in such a way as

to minimize its effects on the surrounding environment. Furthermore, proper reclamation of mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, beauty, and property rights of the citizens of the State. The General Assembly finds that the conduct of mining and reclamation of mined lands as provided by this Article will allow the mining of valuable minerals and will provide for the protection of the State's environment and for the subsequent beneficial use of the mined and reclaimed land. (1971, c. 545, s. 2.)

§ **74-48. Purposes.**—The purposes of this Article are to provide:

(1) That the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration.

(2) That from June 11, 1971, no mining shall be carried on in the State unless plans for such mining include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining. (1971, c. 545, s. 3.)

§ **74-49. Definitions.**—Wherever used or referred to in this Article, unless a different meaning clearly appears from the context:

(1) "Affected land" means the surface area of land that is mined, the surface area of land on which overburden and waste is deposited, and the surface area of land used for processing or treatment plant, stockpiles, and settling ponds.

(2) "Borrow pit" means an area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway construction and maintenance.

(3) "Council" means the Mining Council created by G.S. 74-37 and 74-38.

(4) "Department" means the Department of Conservation and Development. Whenever in this Article the Department is assigned duties, they may be performed by the Director or by such of his subordinates as he may designate.

(5) "Land" shall include submerged lands underlying any river, stream, lake, sound, or other body of water and shall specifically include, among others, estuarine and tidal lands.

(6) "Minerals" means soil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

(7) "Mining" means

a. The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter,

b. Any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from its original location,

c. 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.

It shall not include those aspects of deep mining not having significant effect on the surface, where the affected land does not exceed one acre in area. It shall not include mining operations where the affected land does not exceed one acre in area. It shall not include plants engaged in processing minerals produced elsewhere and whose refuse does not affect more than one acre of land. It shall not include excava-

tion or grading when conducted solely in aid of on-site farming or of on-site construction for purposes other than mining. Removal of overburden and mining of limited amounts of any ores or mineral solids shall not be considered mining when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of any natural deposit, provided that no ores or mineral solids removed during such exploratory excavation or mining are sold, processed for sale, or consumed in the regular operation of a business, and provided further that the affected land resulting from any such exploratory excavation does not exceed one acre in area.

(8) "Neighboring" means in close proximity, in the immediate vicinity, or in actual contact.

(9) "Operator" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, engaged in mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.

(10) "Overburden" means the earth, rock, and other materials that lie above the natural deposit of minerals.

(11) "Peak" means overburden removed from its natural position and deposited elsewhere in the shape of conical piles or projecting points.

(12) "Reclamation" means the reasonable rehabilitation of the affected land for useful purposes, and the protection of the natural resources of the surrounding area. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish on a continuing basis the vegetative cover, soil stability, water conditions and safety conditions appropriate to the area.

(13) "Reclamation plan" means the operator's written proposal as required and approved by the Department for reclamation of the affected land, which shall include but not be limited to:

1. Proposed practices to protect adjacent surface resources;
2. Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;
3. Manner and type of revegetation or other surface treatment of the affected areas;
4. Method of prevention or elimination of conditions that will be hazardous to animal or fish life in or adjacent to the area;
5. Method of compliance with State air and water pollution laws;
6. Method of rehabilitation of settling ponds;
7. Method of control of contaminants and disposal of mining refuse;
8. Method of restoration or establishment of stream channels and stream banks to a condition minimizing erosion, siltation, and other pollution;
9. Such maps and other supporting documents as may be reasonably required by the Department; and
10. A time schedule that meets the requirements of G.S. 74-53.

(14) "Refuse" means all waste soil, rock, mineral, scrap, tailings, slimes, and other material directly connected with the mining, cleaning, and preparation of substances mined and shall include all waste materials deposited on or in the permit area from other sources.

(15) "Ridge" means overburden removed from its natural position and deposited elsewhere in the shape of a long, narrow elevation.

(16) "Spoil bank" means a deposit of excavated overburden or refuse.

(17) "Termination of mining" means cessation of mining operations with intent not to resume, or cessation of mining operations as a result of expiration or revocation of the permit of the operator. Whenever the Department shall have reason to believe that a mining operation has terminated, it shall give the operator written notice of its intention to declare the operation terminated, and he shall have an opportunity to appear within 30 days and present evidence that the operation is continuing; where the Department finds that such evidence is satisfactory, it shall not make such a declaration. (1971, c. 545, s. 4.)

§ 74-50. Permits—General.—After July 1, 1972, no operator shall engage in mining without having first obtained from the Department an operating permit which covers the affected land and which has not terminated, been revoked, been suspended for the period in question, or otherwise become invalid. An operating permit may be modified from time to time to include land neighboring the affected land, in accordance with procedures set forth in G.S. 74-52. A separate permit shall be required for each mining operation that is not on land neighboring a mining operation for which the operator has a valid permit.

No permit shall be issued except in accordance with the procedures set forth in G.S. 74-51, nor modified or renewed except in accordance with the procedures set forth in G.S. 74-52.

An appeal from the Department's denial of a permit may be taken to the Mining Council, as provided by G.S. 74-61.

No permit shall become effective until the operator has deposited with the Department an acceptable performance bond or other security pursuant to G.S. 74-54. If at any time said bond or other security, or any part thereof, shall lapse for any reason other than a release by the Department, and said lapsed bond or security is not replaced by the operator within 30 days after notice of the lapse, the permit to which it pertains shall automatically become void and of no further effect.

An operating permit shall be granted for a period not exceeding 10 years. If the mining operation terminates and the reclamation required under the approved reclamation plan is completed prior to the end of said period, the permit shall terminate. Termination of a permit shall not have the effect of relieving the operator of any obligations which he has incurred under his approved reclamation plan or otherwise. Where the mining operation itself has terminated, no permit shall be required in order to carry out reclamation measures under the reclamation plan.

An operating permit may be renewed from time to time, pursuant to procedures set forth in G.S. 74-52.

An operating permit may be suspended or revoked for cause, pursuant to procedures set forth in G.S. 74-58. (1971, c. 545, s. 5.)

§ 74-51. Permits—Application, granting, conditions. — Any operator desiring to engage in mining shall make written application to the Department for a permit. Such application shall be upon a form furnished by the Department and shall fully state the information called for; in addition, the applicant may be required to furnish such other information as may be deemed necessary by the Department in order adequately to enforce this Article.

The application shall be accompanied by a reclamation plan which meets the requirements of G.S. 74-53. No permit shall be issued until such plan has been approved by the Department.

The application shall be accompanied by a signed agreement, in a form specified by the Department, that in the event a bond forfeiture is ordered pursuant to G.S.

74-59, the Department and its representatives and its contractors shall have the right to make whatever entries on the land and to take whatever actions may be necessary in order to carry out reclamation which the operator has failed to complete.

The Department shall grant or deny the permit requested as expeditiously as possible but in no event later than 60 days after the application form and any supplemental information required shall have been filed with the Department. Priority consideration shall be given to applicants who submit evidence that the mining proposed will be for the purpose of supplying materials to the State Highway Commission.

The Department may deny such permit upon finding:

(1) That any requirement of this Article or any rule or regulation promulgated hereunder will be violated by the proposed operation;

(2) That the operation will have unduly adverse effects on wildlife or fresh water, estuarine, or marine fisheries;

(3) That the operation will violate standards of air quality, surface water quality, or ground water quality which have been promulgated by the Department of Water and Air Resources;

(4) That the operation will constitute a substantial physical hazard to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public property;

(5) That the operation will have a significantly adverse effect on the purposes of a publicly-owned park, forest or recreation area;

(6) That previous experience with similar operations indicates a substantial possibility that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution; or

(7) That the operator has not corrected all violations which he may have committed under any prior permit and which resulted in

a. Revocation of his permit,

b. Forfeiture of part or all of his bond or other security,

c. Conviction of a misdemeanor under G.S. 74-64, or

d. Any other court order issued under G.S. 74-64.

In the absence of any such findings, a permit shall be granted.

Any permit issued shall be expressly conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with such further reasonable and appropriate requirements and safeguards as may be deemed necessary by the Department to assure that the operation will comply fully with the requirements and objectives of this Article. Such conditions may, among others, include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, where the Department finds such screening to be feasible and desirable. Violation of any such conditions shall be treated as a violation of this Article and shall constitute a basis for suspension or revocation of the permit.

Any operator wishing any modification of the terms and conditions of his permit or of the approved reclamation plan shall submit a request for modification in accordance with the provisions of G.S. 74-52.

If the Department denies an application for a permit, it shall notify the operator in writing, stating the reasons for its denial and any modifications in the application which would make it acceptable. The operator may thereupon modify his application or file an appeal, as provided in G.S. 74-61, but no such appeal shall be taken more than 60 days after notice of disapproval has been mailed to him at the address shown on his application.

Upon approval of an application, the Department shall set the amount of the performance bond or other security which is to be required pursuant to G.S. 74-54. The operator shall have 60 days following the mailing of such notification in which to deposit the required bond or security with the Department. The operating permit shall not be issued until receipt of this deposit.

When one operator succeeds to the interest of another in any uncompleted mining operation, by virtue of a sale, lease, assignment, or otherwise, the Department may release the first operator from the duties imposed upon him by this Article with reference to such operation and transfer the permit to the successor operator; provided, that both operators have complied with the requirements of this Article and that the successor operator assumes the duties of the first operator with reference to reclamation of the land and posts a suitable bond or other security. (1971, c. 545, s. 6.)

§ **74-52. Permits—Modification, renewal.**—Any operator engaged in mining under an operating permit may apply at any time for modification of said permit, and at any time during the two years prior to its expiration date for renewal of the permit. Such application shall be in writing upon forms furnished by the Department and shall fully state the information called for; in addition, the applicant may be required to furnish such other information as may be deemed necessary by the Department in order adequately to enforce the Article. However, it shall not be necessary to resubmit information which has not changed since the time of a prior application, where the applicant states in writing that such information has not changed.

The procedure to be followed and standards to be applied in renewing a permit shall be the same as those for issuing a permit; provided, however, that in the absence of any changes in legal requirements for issuance of a permit since the date on which the prior permit was issued, the only basis for denying a renewal permit shall be an uncorrected violation of the type listed in G.S. 74-51(7), or failure to submit an adequate reclamation plan in light of conditions then existing.

A modification under this section may affect the land area covered by the permit, the approved reclamation plan coupled with the permit, or other terms and conditions of the permit. A permit may be modified to include land neighboring the affected land, but not other lands. The reclamation plan may be modified in any manner, so long as the Department determines that the modified plan fully meets the standards set forth in G.S. 74-53 and that the modifications would be generally consistent with the bases for issuance of the original permit. Other terms and conditions may be modified only where the Department determines that the permit as modified would meet all requirements of G.S. 74-50 and G.S. 74-51. No modification shall extend the expiration date of any permit issued under this Article.

In lieu of a modification or a renewal, an operator may apply for a new permit in the manner prescribed by G.S. 74-50 and G.S. 74-51.

No modification or renewal of a permit shall become effective until any required changes have been made in the performance bond or other security posted under the provisions of G.S. 74-54, so as to assure the performance of obligations assumed by the operator under the permit and reclamation plan. (1971, c. 545, s. 7.)

§ **74-53. Reclamation plan.**—The operator shall submit with his application for an operating permit a proposed reclamation plan. Said plan shall include as a minimum, each of the elements specified in the definition of "reclamation plan" in G.S. 74-49, plus such other information as may be reasonably required by the Department. The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall to the extent feasible be conducted simultaneously with mining operations and in any event be initiated at the earliest practicable time after completion or termination of mining on any segment of the permit area. The plan shall provide that reclamation activities shall be

completed within two years after completion or termination of mining on each segment of the area for which a permit is requested unless a longer period is specifically permitted by the Department.

The Department may approve, approve subject to stated modifications, or reject the plan which is proposed. The Department shall approve a reclamation plan (as submitted or as modified) only where it finds that it adequately provides for those actions necessary to achieve the purposes and requirements of this Article, and that in addition, the plan meets the following minimum standards:

(1) The final slopes in all excavations in soil, sand, gravel, and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.

(2) Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.

(3) In open cast mining operations, all overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.

(4) In no event shall any provision of this section be construed to allow small pools of water that are, or are likely to become, noxious, odious, or foul to collect or remain on the mined area. Suitable drainage ditches or conduits shall be constructed or installed to avoid such conditions. Lakes, ponds, and marsh lands shall be considered adequately reclaimed lands when approved by the Department.

(5) The type of vegetative cover and methods of its establishment shall be specified, and in every case shall conform to accepted and recommended agronomic and reforestation restoration practices as established by the North Carolina Agricultural Experiment Station and North Carolina Forest Service. Advice and technical assistance may be obtained through the State Soil and Water Conservation Districts.

The Department shall be authorized to approve a reclamation plan despite the fact that such plan does not provide for reclamation treatment of every portion of the affected land, where the Department finds that because of special conditions such treatment would not be feasible for particular areas and that the plan takes all practical steps to minimize the extent of such areas. (1971, c. 545, s. 8.)

§ **74-54. Bonds.**—Each applicant for an operating permit, or for the renewal thereof, shall file with the Department following approval of his application and shall thereafter maintain in force a bond in favor of the State of North Carolina, executed by a surety approved by the Commissioner of Insurance, in the amount set forth below. The bond herein provided for must be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by the surety shall be effectuated only upon 60 days written notice thereof to the Department and to the operator.

The applicant shall have the option of filing a separate bond for each operating permit or of filing a blanket bond covering all mining operations within the State for which he holds permits. The amount of each bond shall be based upon the area of affected land to be reclaimed under the approved reclamation plan or plans to which it pertains, less any such area whose reclamation has been completed and released from coverage by the Department pursuant to G.S. 74-56. Where such area totals less than five acres, the bond shall be in the amount of two thousand five hundred dollars ($2,500); where it is five or more, but less than 10 acres, the bond shall be in the amount of five thousand dollars ($5,000); where it is 10 or more, but less than 25 acres, the bond shall be in the amount of twelve thousand five hundred dollars ($12,500); where it is 25 or more acres, the bond shall be in the amount of twenty-five thousand dollars ($25,000).

The bond shall be conditioned upon the faithful performance of the requirements set forth in this Article and of the rules and regulations adopted pursuant thereto. Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released only upon written notification from the Department. Notification shall be given upon completion of compliance or acceptance by the Department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

In lieu of the surety bond required by this section, the operator may file with the Department a cash deposit, negotiable securities, a mortgage of real property acceptable to the Department, or an assignment of a savings account in a North Carolina bank on an assignment form prescribed by the Department.

If the license to do business in North Carolina of any surety upon a bond filed pursuant to this Article should be suspended or revoked, the operator shall, within 60 days after receiving notice thereof, substitute for such surety a good and sufficient corporate surety authorized to do business in this State. Upon failure of the operator to make such substitution, his permit shall automatically become void and of no effect. (1971, c. 545, s. 9.)

§ 74-55. Reclamation report. — Within 30 days after completion or termination of mining on an area under permit or within 30 days after each anniversary of the issuance of the operating permit, whichever is earlier, or at such later date as may be provided by rules and regulations of the Department, and each year thereafter until reclamation is completed and approved, the operator shall file a report of activities completed during the preceding year on a form prescribed by the Department, which shall:

(1) Identify the mine, the operator and the permit number;

(2) State acreage disturbed by mining in the last 12-month period;

(3) State and describe amount and type of reclamation carried out in the last 12-month period;

(4) Estimate acreage to be newly disturbed by mining in the next 12-month period;

(5) Provide such maps as may be specifically requested by the Department. (1971, c. 545, s. 10.)

§ 74-56. Inspection and approval of reclamation; bond release or forfeiture.—Upon receipt of the operator's annual report or report of completion of reclamation and at any other reasonable time the Department may elect, the Department shall cause the permit area to be inspected to determine whether the operator has complied with the reclamation plan, the requirements of this Article, any rules and regulations promulgated hereunder, and the terms and conditions of his permit. Accredited representatives of the Department shall have the right at all reasonable times to enter upon the land subject to the permit for the purpose of making such inspection and investigation.

The operator shall proceed with reclamation as scheduled in the approved reclamation plan. Following its inspection, the Department shall give written notice to the operator of any deficiencies noted. The operator shall thereupon commence action within 30 days to rectify these deficiencies and shall diligently proceed until they have been corrected. The Department may extend performance periods referred to in this section and in G.S. 74-53 for delays clearly beyond the operator's control, but only in cases where the Department finds that the operator is making every reasonable effort to comply.

Upon completion of reclamation of an area of affected land, the operator shall notify the Department. The Department shall make an inspection of the area, and if it finds that reclamation has been properly completed, it shall notify the operator in writing and release him from further obligations regarding such affected land.

At the same time it shall release all or the appropriate portion of any performance bond or other security which he has posted under G.S. 74-54.

If at any time the Department finds that reclamation of the permit area is not proceeding in accordance with the reclamation plan and that the operator has failed within 30 days after notice to commence corrective action, or if the Department finds that reclamation has not been properly completed in conformance with the reclamation plan within two years, or longer if authorized by the Department, after termination of mining on any segment of the permit area, it shall initiate forfeiture proceedings against the bond or other security filed by the operator under G.S. 74-59. In addition, such failure shall constitute grounds for suspension or revocation of the operator's permit, as provided in G.S. 74-58. (1971, c. 545, s. 11.)

§ 74-57. Departmental modification of permit or reclamation plan.—If at any time it appears to the Department from its inspection of the affected land that the activities under the reclamation plan and other terms and conditions of the permit are failing to achieve the purposes and requirements of this Article, it shall give the operator written notice of that fact, of its intention to modify the reclamation plan and other terms and conditions of the permit in a stated manner, and of the operator's right to a hearing on the proposed modification at a stated time and place. The date for such hearing shall be not less than 30 nor more than 60 days after the date of the notice unless the Department and the operator shall mutually agree on another date. Following the hearing the Department shall have the right to modify the reclamation plan and other terms and conditions of the permit in the manner stated in the notice or in such other manner as it deems appropriate in view of the evidence submitted at the hearing. (1971, c. 545, s. 12.)

§ 74-58. Suspension or revocation of permit.—Whenever the Department shall have reason to believe that a violation of (1) this Article, (2) any rules and regulations promulgated hereunder, or (3) the terms and conditions of a permit, including the approved reclamation plan, has taken place, it shall serve written notice of such fact upon the operator, specifying the facts constituting such apparent violation and informing the operator of his right to a hearing at a stated time and place. The date for such hearing shall be not less than 30 nor more than 60 days after the date of the notice, unless the Department and the operator shall mutually agree on another date. The operator may appear at the hearing, either personally or through counsel, and present such evidence as he may desire in order to prove that no violation has taken place or exists. If the operator or his representative does not appear at the hearing, or if the Department following the hearing finds that there has been a violation, the Department may suspend the permit until such time as the violation is corrected or may revoke the permit where the violation appears to be willful.

The effective date of any such suspension or revocation shall be 60 days following the date of the decision. An appeal to the Mining Council under G.S. 74-61 shall stay such effective date until the Council's decision. A further appeal to superior court under G.S. 74-62 shall stay such effective date until the date of the superior court judgment. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon such action.

Any operator whose permit has been suspended or revoked shall be denied a new permit or a renewal of the old permit to engage in mining until he gives evidence satisfactory to the Department of his ability and intent to fully comply with the provisions of this Article, rules and regulations promulgated hereunder, and the terms and conditions of his permit, including the approved reclamation

plan, and that he has satisfactorily corrected all previous violations. (1971, c. 545, s. 13.)

Editor's Note.—The Rules of Civil Procedure are found in § 1A-1.

§ **74-59. Bond forfeiture proceedings.**—Whenever the Department determines the necessity of a bond forfeiture under the provisions of G.S. 74-56, or whenever it revokes an operating permit under the provisions of G.S. 74-58, it shall request the Attorney General to initiate forfeiture proceedings against the bond or other security filed by the operator under G.S. 74-54; provided, however, that no such request shall be made for forfeiture of a bond until the surety has been given written notice of the violation and a reasonable opportunity to take corrective action. Such proceedings shall be brought in the name of the State of North Carolina. In such proceedings, the face amount of the bond or other security, less any amount released by the Department pursuant to G.S. 74-56, shall be treated as liquidated damages and subject to forfeiture. All funds collected as a result of such proceedings shall be placed in a special fund and used by the Department to carry out, to the extent possible, the reclamation measures which the operator has failed to complete. If the amount of the bond or other security filed pursuant to this section proves to be insufficient to complete the required reclamation pursuant to the approved reclamation plan, the operator shall be liable to the Department for any excess above the amount of the bond or other security which may be required to defray the cost of completing the required reclamation. (1971, c. 545, s. 14.)

§ **74-60. Notice.**—Whenever in this Article written notice is required to be given by the Department, such notice shall be mailed by registered or certified mail to the permanent address of the operator set forth in his most recent application for an operating permit or for a modification or renewal of such permit. No other notice shall be required. (1971, c. 545, s. 15.)

§ **74-61. Appeals.**—An appeal may be taken to the Mining Council from any decision or determination of the Department refusing, modifying, suspending, revoking, or terminating an operating permit or reclamation plan, or imposing any term or condition on said permit or reclamation plan. The person taking such appeal shall within 60 days after the Department's decision give written notice to the Mining Council through its secretary that he desires to take an appeal, at the same time filing a copy of such notice with the Department. The chairman of the Mining Council shall fix a reasonable time and place for a hearing, giving reasonable notice thereof to the appellant and to the Department. The Mining Council, or a committee thereof designated by the Council's rules of procedure, shall thereupon conduct a full and complete hearing as to the matters in controversy, after which it shall within a reasonable time give a written decision setting forth its findings of fact and its conclusions. The Council or its designated committee may affirm, affirm with modifications, or overrule the decision of the Department and may direct the Department to take such action as may be required to effectuate its decision. A further appeal may be taken from the Council's decision to a superior court, as provided below. (1971, c. 545, s. 16.)

§ **74-62. Judicial review.**—An appeal to the courts may be taken from any decision of the Mining Council, in the manner provided by Article 33 of Chapter 143 of the General Statutes of North Carolina. Such an appeal may also lie against the Department's refusal to release part or all of a bond or other security posted under G.S. 74-54, as provided in G.S. 74-56. Any such appeal may be filed in the Superior Court of Wake County or in the superior court of the county in which the mining operation is to be conducted. (1971, c. 545, s. 17.)

§ **74-63. Rules and regulations.**—The Mining Council is hereby given authority to promulgate such rules and regulations as may be reasonably necessary

respecting the administration of this Article and in conformity herewith. Any such rules and regulations shall be published in accordance with the provisions of Article 18 of Chapter 143 of the General Statutes of North Carolina. (1971, c. 545, s. 18.)

§ **74-64. Penalty for violations.**—In addition to other penalties provided by this Article, any operator who engages in mining in willful violation of the provisions of this Article or of any rules and regulations promulgated hereunder or who willfully misrepresents any fact in any action taken pursuant to this Article or wilfully gives false information in any application or report required by this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each offense. Each day of continued violation after written notification shall be considered a separate offense.

In addition to other remedies, the Department may institute any appropriate action or proceedings to prevent, restrain, correct, or abate any violation of this Article or of any rules and regulations promulgated hereunder. (1971, c. 545, s. 19.)

§ **74-65. Effect on local zoning regulations.**—No provision of this Article shall be construed to supersede or otherwise affect or prevent the enforcement of any zoning regulation or ordinance duly adopted by an incorporated city or county or by any agency or department of the State of North Carolina, except insofar as a provision of said regulation or ordinance is in direct conflict with this Article. (1971, c. 545, s. 20.)

§ **74-66. Private relief against nuisance or hazard.**—No provision of this Article shall be construed to restrict or impair the right of any private or public person, association, corporation, partnership, officer, or agency to bring any legal or equitable action for redress against nuisances or hazards. (1971, c. 545, s. 21.)

§ **74-67. Exemptions.**—The provisions of this Article shall not apply to those activities of the North Carolina State Highway Commission, nor of any person, firm, or corporation acting under contract with said Commission, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the public road systems of North Carolina; provided, that this exemption shall not become effective until the State Highway Commission shall have adopted reclamation standards applying to such activities and such standards have been approved by the Mining Council. The provisions of this Article shall not apply to mining on federal lands under a valid permit from the U.S. Forest Service or the U.S. Bureau of Land Management. (1971, c. 545, s. 22.)

§ **74-68. Cooperation with other agencies; contracts and grants.**—The Department, with the approval of the Governor, and in order to accomplish any of the purposes of the Department, may apply for, accept, and expend grants from the federal government and its agencies and from any foundation, corporation, association, or individual; may enter into contracts relating to such grants; and may comply with the terms, conditions, and limitations of any such grant or contract. The Department may engage in such research as may be appropriate to further its ability to accomplish its purposes under this Article, and may contract for such research to be done by others. The Department may cooperate with any federal, state, or local government or agency, of this or any other state, in mutual programs to improve the enforcement of this Article or to accomplish its purposes more successfully. (1971, c. 545, s. 23.)

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.

State Government Reorganization.—The special and company police were transferred to the Department of Justice by § 143A-54, enacted by Session Laws 1971, c. 864.

§ 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. Such bonds shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8.

(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; 1969, c. 844, s. 8.)

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

The 1969 amendment repealed the former second sentence and proviso to subsection (c), relating to the form of the bond and the sureties thereon, and substituted the present second sentence of subsection (c) therefor.

Jurisdiction of Company or Special Police; Territorial Limits.—See opinion of Attorney General to Mr. William S. Mason, Jr., Business Manager, Pembroke State University, 6/11/70.

Chapter 75.

Monopolies, Trusts and Consumer Protection.

§ 75-1. Combinations in restraint of trade illegal.

Editor's Note.—For note on the law of unfair competition in North Carolina, see 46 N.C.L. Rev. 856 (1968).

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

Agreements in partial restraint, etc. — In accord with original. See Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

The true test now generally applied to agreements in partial restraint of trade is whether the restraint is such as to afford a fair protection to the interests of the party in whose favor it is given, and not so large as to interfere with the interests of the public. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

Quoted in Knutton v. Cofield, 273 N.C. 355, 160 S.E.2d 29 (1968).

§ 75-1.1. Methods of competition, acts and practices regulated; legislative policy.—(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(b) The purpose of this section is to declare, and to provide civil legal means to maintain, ethical standards of dealings between persons engaged in business, and between persons engaged in business and the consuming public within this State, to the end that good faith and fair dealings between buyers and sellers at all levels of commerce be had in this State.

(c) Nothing in this section shall apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station, or other advertising medium in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and when the newspaper, periodical or radio or television station, or other advertising medium did not have a direct financial interest in the sale or distribution of the advertised product or service.

(d) Any party claiming to be exempt from the provisions of this section shall have the burden of proof with respect to such claim. (1969, c. 833.)

Editor's Note. — For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-2. Any restraint in violation of common law included.

Stated in Knutton v. Cofield, 273 N.C. 355, 160 S.E.2d 29 (1968).

§ 75-4. Contracts to be in writing.

Cross Reference.—For cases decided under the provisions of this section and § 75-5, see note to § 75-5.

Applied in Beck Distrib. Corp. v. Imported Parts, Inc., 7 N.C. App. 483, 173 S.E.2d 41 (1970).

§ 75-5. Particular acts prohibited.

Editor's Note.—

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

Statutes on monopolies and trusts are addressed to the sale and movement in commerce of goods, wares, merchandise and other things of value. Knutton v. Cofield, 273 N.C. 355, 160 S.E.2d 29 (1968).

And cases arising under such statutes ordinarily involve a vendor and a purchaser. Knutton v. Cofield, 273 N.C. 355, 160 S.E.2d 29 (1968).

Thus, the prohibited acts are usually connected with a purchase and sale. Knutton v. Cofield, 273 N.C. 355, 160 S.E.3d 29 (1968).

Test, etc.—

Contracts in restraint of trade were formerly held to be invalid as against public policy, but the more modern doctrine sustains them when the restraint is only partial and reasonable. The test is to consider whether it is such only as will afford a fair protection to the interests of the party in favor of whom it is given, and not so large or extensive as to interfere with the interests of the public. Knutton v. Cofield, 273 N.C. 355, 160 S.E.2d 29 (1968).

Contracts tending only to partially restrain trade are enforceable where: (1) They are founded on a valuable consideration; (2) the restrictions imposed are reasonably necessary to protect the legitimate interest of the covenantee; and (3) the limitations or restrictions are reasonable as to time and area. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

Contract Not to Engage, etc.—

It is the rule today that when one sells a trade or business and, as an incident of the sale, covenants not to engage in the same business in competition with the purchaser, the covenant is valid and enforceable (1) if it is reasonably necessary to protect the legitimate interest of the purchaser; (2) if it is reasonable with respect to both time and territory; and (3) if it does not interfere with the interest of the public. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

Although a valid covenant not to compete must be reasonable as to both time and area, these two requirements are not independent and unrelated aspects of the restraint. Each must be considered in determining the reasonableness of the other. Furthermore, neither is conclusive of the validity of the covenant, but both are important factors in settling that question. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

A covenant by the owner of a jewelry store not to engage in jewelry business competition with the purchaser within 10 miles of the city where the seller's jewelry store is located for a period of 10 years, is not void as being unreasonable as to time or territory. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

Covenants restricting the use of property for purposes competitive with those of the covenantees have generally been held to be enforceable where they involve only partial restraints of trade, are found on sufficient consideration and are reasonably limited as to duration and area covered. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

The reasonableness of a restraining covenant is a matter of law for the court to decide. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

And Depends on Circumstances of Particular Case.—The reasonableness of the restraint depends upon the circumstances of the particular case. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

Reasonableness of Restraints As to Time.—Covenants in restraint of trade are not unreasonable as to time if their duration is no longer than reasonably necessary to afford fair protection to the covenantee and not so long as to be injurious to the public. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

Where the duration of the restraint is limited as to time, the mere length of the period of time during which the restraint is to operate, standing alone, is never sufficient to render the restrictive covenant not to compete ipso facto unenforceable. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

A period of 25 years is not an unduly long time to expect property purchased for gasoline service station purposes to continue to be applied to such use. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

Restrictions on Free Use of Land.—Although the courts will not tolerate unreasonable restraints upon trade, and frown upon restrictions upon the free use of land, there is no doubt of the validity, under ordinary circumstances, of a restriction imposed by a lessor, ancillary to a leasing of part of

his property, upon the remainder of the property owned or controlled. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

It appears to be well settled that the seller or lessor of property (as distinguished from business or good will) may by a reasonably limited restrictive promise agree to refrain from (1) himself engaging in, or (2) from disposing of his property in such a way that others can engage in, a business which would impair the value of the property to the buyer for the purpose for which he intended to use it. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

The owner of a business, who also owns land nearby, may sell or lease such land to a buyer or tenant who promises not to use it for business purposes in competition with that of the seller or lessor. Here, the restriction is limited to the use of the land transferred. Or, the owner of a tract of land or business block may sell or lease a portion thereof to one intending to use it for a particular purpose, making to him an ancillary promise not to permit the remaining part of the tract or building to be used for a competitive business purpose. These agreements are usually sustained as being reasonable, even though the purpose is to prevent competition and no business good will is being transferred. Quadro Stations, Inc. v. Gilley, 7 N.C. App. 227, 172 S.E.2d 237 (1970).

Sufficiency of Consideration for Contract in Restraint of Trade.—A contract in restraint of trade, like any other contract, must be supported by a consideration, but, unless the contract be a fraud upon the party sought to be restrained or nudum pactum, courts ordinarily will not inquire into the adequacy of the consideration. It is sufficient that the contract shows on its face a legal and valuable consideration; but whether it is adequate or inadequate to the restraint imposed must be determined by the parties themselves upon their own view of all the circumstances attending the particular transaction. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

Consideration for sale of goodwill and withdrawal from competition may be found in the general consideration for the sale of the business. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

A longer period of time in a covenant not to compete is justified where the area in which competition is prohibited is relatively small. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

The modern rule permitting the sale of goodwill recognizes that one who, by his skill and industry, builds up a business, acquires a property right in the goodwill of his patrons and that this property is not marketable unless the owner is at liberty to sell his right of competition to the full extent of the field from which he derives his profit and for a reasonable length of time. Where the contract is between individuals or between private corporations, which do not belong to the quasi-public class, there is no reason why the general rule that the seller should not be allowed to fix the time for the operation of the restriction so as to command the highest market price for the property he disposes of should apply. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

Intention to Sell Goodwill.—Where a person sells a business and in connection therewith agrees not to engage in the same business in the same place, the obvious intention is to sell the goodwill of the business. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

A contract for a valid consideration not to engage in the manufacture and sale of firearms in general use would be allowed to cover a larger extent of territory than would a contract not to engage in the manufacture of timber or the ginning of cotton. Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

A contract whereby plaintiff and defendant jointly undertake to provide a coin-operated phonograph for the use of patrons in defendant's restaurant, the plaintiff agreeing to furnish and service the machine and the defendant agreeing to furnish the space and the cost of electricity, is not a contract for the sale of goods, wares or merchandise within the contemplation of the statutes against restraint of trade. Knutton v. Cofield, 273 N.C. 355, 160 S.E.2d 29 (1968).

For covenants not to compete which accompanied the sale of a trade or business and contained limitations of ten, fifteen, and twenty years, as well as limitations for the life of one of the parties, see Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

§ 75-6. Violation a misdemeanor; punishment. — Any corporation, either as agent or principal, violating any of the provisions of § 75-5 shall be guilty

of a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars for each and every offense, and any person, whether acting for himself or as officer of any corporation or as agent of any corporation or persons violating any of the provisions of this chapter, with the exception of G.S. 75-1.1 (the violation of which does not constitute a crime), shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1913, c. 41, s. 5; C. S., s. 2564; 1969, c. 833.)

Editor's Note. — The 1969 amendment inserted "with the exception of G.S. 75-1.1 (the violation of which does not constitute a crime)" near the end of the section.

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-7. Persons encouraging violation guilty. — Any person, being either within or without the State, who encourages or willfully allows or permits any agent or associates in business in this State, to violate any of the provisions of this chapter, with the exception of G.S. 75-1.1 (the violation of which does not constitute a crime), shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in § 75-6. (1913, c. 41, s. 6; C. S., s. 2565; 1969, c. 833.)

Editor's Note. — The 1969 amendment inserted "with the exception of G.S. 75-1.1 (the violation of which does not constitute a crime)."

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-9. Duty of Attorney General to investigate.—The Attorney General of the State of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations or persons doing business in this State, which are or may be embraced within the meaning of the statutes of this State defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations or persons in North Carolina doing business in violation of law; and all other corporations of every character engaged in this State in the business of transporting property or passengers, or transmitting messages, and all other public service corporations of any kind or nature whatever which are doing business in the State for hire. Such investigation shall be with a view of ascertaining whether the law or any rule of the Utilities Commission or Commission of Banks is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted. (1913, c. 41, s. 8; C. S., s. 2567; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1969, c. 833.)

Editor's Note.—

The 1969 amendment inserted "or persons" in two places in the section.

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-10. Power to compel examination.—In performing the duty required in § 75-9, the Attorney General shall have power, at any and all times, to require the officers, agents or employees of any such corporation or business, and all other persons having knowledge with respect to the matters and affairs of such corporations or businesses, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such corporations or businesses, or which are in any way connected with the business thereof; and the Attorney General is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have a right to apply to any justice or judge of the appellate or superior court divisions, after five days' notice of such application, for an order on any such person or corporation he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be

punishable as in other cases of disobedience of a proper order of such judge. (1913, c. 41, s. 9; C. S., s. 2568; 1969, c. 44, s. 56; c. 833.)

Editor's Note.—The first 1969 amendment substituted "justice or judge of the appellate or superior court divisions" for "judge of the supreme or superior court" in the second sentence.

The second 1969 amendment inserted "or business" in one place and "or businesses" in two places in the first sentence.

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-11. Person examined exempt from prosecution.—No natural person examined, as provided in G.S. 75-10, shall be subject to indictment, criminal prosecution, criminal punishment or criminal penalty by reason of or on account of anything disclosed by him upon examination, and full immunity from criminal prosecution and criminal punishment by reason of or on account of anything so disclosed is hereby extended to all natural persons so examined. The immunity herein granted shall not apply to civil actions instituted pursuant to this chapter. (1913, c. 41, s. 9; C. S., s. 2569; 1969, c. 833.)

Editor's Note. — The 1969 amendment rewrote the first sentence and added the second sentence.

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-12. Refusal to furnish information; false swearing.—Any corporation or person unlawfully refusing or willfully neglecting to furnish the information required by this chapter, when it is demanded as herein provided, shall be guilty of a misdemeanor and fined not less than one thousand dollars: Provided, that if any corporation or person shall in writing notify the Attorney General that it objects to the time or place designated by him for the examination or inspection provided for in this chapter, it shall be his duty to apply to a justice or judge of the appellate or superior court division, who shall fix an appropriate time and place for such examination or inspection, and such corporation or person shall, in such event, be guilty under this section only in the event of its failure, refusal or neglect to appear at the time and place so fixed by the judge and furnish the information required by this chapter. False swearing by any person examined under the provisions of this chapter shall constitute perjury, and the person guilty of it shall be punishable as in other cases of perjury. (1913, c. 41, s. 10; C. S., s. 2570; 1969, c. 44, s. 57; c. 833.)

Editor's Note.—The first 1969 amendment substituted "justice or judge of the appellate or superior court division" for "judge of the supreme or superior court" in the first sentence.

The second 1969 amendment inserted "or person" in three places in the section.

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-14. Action to obtain mandatory order.—If it shall become necessary to do so, the Attorney General may prosecute civil actions in the name of the State on relation of the Attorney General to obtain a mandatory order, including (but not limited to) permanent or temporary injunctions and temporary restraining orders, to carry out the provisions of this chapter, and the venue shall be in any county as selected by the Attorney General. (1913, c. 41, s. 11; C. S., s. 2572; 1969, c. 833.)

Editor's Note. — The 1969 amendment inserted "including (but not limited to) permanent or temporary injunctions and temporary restraining orders."

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-15. Actions prosecuted by Attorney General.

Editor's Note.—

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-16. Civil action by person injured; treble damages.—If any person shall be injured or the business of any person, firm or corporation shall be

broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed by a jury in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict. (1913, c. 41, s. 14; C. S., s. 2574; 1969, c. 833.)

Editor's Note. — The 1969 amendment inserted "any person shall be injured or" near the beginning of the section.

For comment entitled "Consumer Protection and Unfair Competition—The 1969 Legislation," see 48 N.C.L. Rev. 896 (1970).

§ 75-17. Lender may not require borrower to deal with particular insurer.—No person, firm, or corporation engaged in lending money on the security of real or personal property, and no trustee, director, officer, agent, employee, affiliate, or associate, of any such person, firm, or corporation, shall either directly or indirectly require or impose as a condition precedent.

To financing the purchase of such property,

To lending money upon the security of a mortgage, deed of trust, or other security instrument,

For the renewal or extension of any such loan, mortgage, or deed of trust

For the performance of any other act in connection therewith,

that such person, firm, or corporation,

For whom such purchase is to be financed,

To whom the money is to be loaned,

For whom such extension, renewal, or other act is to be granted,

negotiate, procure, or otherwise obtain any policy of insurance or renewal, or extension thereof, covering such property, or a security interest therein, by or through a particular insurance company, agent, broker, or other person so specified or otherwise designated in any manner by the lenders, or their agents or employees or affiliated or related companies. (1969, c. 1032, s. 1.)

§ 75-18. Lender may require nondiscriminatory approval of insurer.—Although the lender and other persons enumerated in § 75-17 may not specify or designate as a condition precedent a particular insurance company or agent, those persons, firms, or corporations engaged in lending money may approve the insurer selected by the borrower on a reasonable, nondiscriminatory basis, related to the solvency of the company and the type and provisions of policy coverage. (1969, c. 1032, s. 2.)

§ 75-19. Violators subject to fine and injunction.—The superior court, on complaint by any person that § 75-17 or 75-18 is being violated, may issue an injunction against such violation and may fine all persons, firms, corporations, and officers, directors, trustees, agents, employees, or affiliates of such up to two thousand dollars ($2,000.00) per person for such violation. In event of a disregard of such injunction or other court order, the superior court shall hold such parties in contempt and prescribe such further penalties as the court in its discretion shall so determine. (1969, c. 1032, s. 3.)

§§ 75-20 to 75-26: Reserved for future codification purposes.

§ 75-27. Unsolicited merchandise through the mail. — Unless otherwise agreed, where unsolicited goods are delivered by mail or common carrier to a person, he has a right to refuse to accept delivery of the goods and is not bound to return such goods to the sender. If such unsolicited goods are addressed to and intended for the recipient, they shall be deemed a gift to the recipient, who may use them or dispose of them in any manner without any obligation to the sender. (1969, c. 70, s. 1.)

Editor's Note.—Section 3, c. 70, Session Laws 1969, provides that the act shall become effective July 1, 1969.

§ 75-28. Unauthorized disclosure of tax information; violation a misdemeanor.—Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for any person, firm or corporation employed or engaged to prepare, or who or which prepares or undertakes to prepare, for any other person or taxpayer any tax form, report or return, to disclose, divulge or make known in any manner or use for any purpose or in any manner other than in the preparation of such form, report or return, without the express consent of the taxpayer or person for whom the form or return is prepared, the name or address of the taxpayer or such other person, the amount of income, income tax or other taxes, or any other information shown on or included in such form, report or return, or any information which may be or may have been furnished by the taxpayer or such other person to the preparer of such form, report or return or to the person, firm or corporation so employed or engaged.

Nothing in this section shall be construed to amend or modify the authority specified in G.S. 105-276(6) or any statute enacted in substitution therefor.

Nothing in this section shall be construed to prohibit the inspection of such forms, reports or returns required under Subchapter I of Chapter 105 of the General Statutes in accordance with the authority provided in G.S. 105-259, or the examination of any person, books, papers, records or other data in accordance with the authority provided in G.S. 105-258.

Any person, firm or corporation, or any officer, agent, clerk, employee, or former officer or employee, of any firm or corporation engaged or formerly engaged in the preparation of tax forms, reports or returns for others, whether acting for himself or as agent for such corporation, who or which shall violate the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1971, c. 231.)

Chapter 75A.

Boating and Water Safety.

Article 1.

Boating Safety Act.

Article 2.

North Carolina Water Safety Committee.

ARTICLE 1.

Boating Safety Act.

§ 75A-1. Declaration of policy.

Editor's Note. — Session Laws 1969, c. 1093, changed the heading of this chapter from "Motorboats" to "Boating and Water Safety," designated §§ 75A-1 through 75A-19 as article 1 and added article 2.

§ 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.

(6) "Waters of this State" means any waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State, but does not include private ponds as defined in G.S. 113-129. (1959, c. 1064, s. 2; 1965, c. 634, s. 1; 1969, c. 87.)

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

The 1969 amendment deleted "public" between "any" and "waters" near the beginning of subdivision (6) and added "but does not include private ponds as defined in G.S. 113-129" at the end of that subdivision.

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

§ 75A-3. Wildlife Resources Commission to administer Chapter; Motorboat Committee; funds for administration.

State Government Reorganization.—The Wildlife Resources Commission was transferred to the Department of Natural and Economic Resources by § 143A-118, enacted by Session Laws 1971, c. 864.

§ 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 10hp 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 one half hour after sunset to one half hour before 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.

(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; 1971, c. 296, ss. 1, 2.)

Editor's Note.—

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

The first 1967 amendment deleted "Pender" from the list of counties formerly appearing 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.

The 1971 amendment, effective July 1, 1971, substituted "and from one half hour after sunset to one half hour before sunrise" for "and from sunset to sunrise" near the middle of subsection (n) and deleted, at the end of subsection (n), a proviso excepting certain named counties from the application of the 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-10.1. Family purpose doctrine applicable.—The family purpose doctrine, as applicable in this State to tort cases arising from the operation of motor vehicles, shall apply to tort cases arising from the operation of motorboats and vessels as those terms are defined in this Chapter. (1971, c. 450, s. 1.)

Editor's Note. — Section 3, c. 450, Session Laws 1971, makes the act effective on July 1, 1971.

Section 2, c. 450, Session Laws 1971, effective July 1, 1971, provides: "The provisions of this act shall not apply to pending litigation."

§ 75A-10.2. Proof of ownership of motorboat.—(a) In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving motorboats or vessels as said terms are described in G.S. 75A-2, proof of ownership of such motorboat or vessel at the time of such accident or collision shall be prima facie evidence that said motorboat or vessel was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which said injury or cause of action arose.

(b) Proof of the certificate of number stating the number awarded to the motorboat or vessel in the name of any person, firm or corporation as required by this Chapter, or proof of the licensing, registration, or documentation of said motorboat or vessel as required by other state or federal law in the name of

any person, firm or corporation, shall for the purpose of any such action, be prima facie evidence of ownership and that said motorboat or vessel was then being operated by and under the control of a person for whose conduct the owner was legally responsible, for the owner's benefit, and within the course and scope of his employment. (1971, c. 652, s. 1.)

Editor's Note.—Session Laws 1971, c. 652, s. 2, makes the act effective July 1, 1971.

§ 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-13.1. Skin and scuba divers.—(a) No person shall engage in skin diving or scuba diving in the waters of this State which are open to boating, or assist in such diving, without displaying a diver's flag from a mast, buoy, or other structure at the place of diving; and no person shall display such flag except when diving operations are under way or in preparation.

(b) The diver's flag shall be square, not less than twelve (12) inches on a side, and shall be of red background with a diagonal white stripe, of a width equal to one fifth (1/5) of the flag's height, running from the upper corner adjacent to the mast downward to the opposite outside corner.

(c) No operator of a vessel under way in the waters of this State shall permit such vessel to approach closer than fifty (50) feet to any structure from which a diver's flag is then being displayed, except where such flag is so positioned as to constitute an unreasonable obstruction to navigation; and no person shall engage in skin diving or scuba diving or display a diver's flag in any locality at which the same will unreasonably obstruct vessels from making legitimate navigational use of the water. (1969, c. 97, s. 1.)

Editor's Note.—Section 3, c. 97, Session Laws 1969, provides that the act shall not apply to New Hanover and Pender counties.

§ 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. Regulations on water safety; adoption of the Uniform Waterway Marking System.—(a) Upon petition to it in accordance with subsection (b) of this section, the Wildlife Resources Commission is empowered to make special regulations, for the local water in question, as to:

(1) Operation of vessels, including restrictions concerning speed zones, and type of activity conducted.
(2) Promotion of boating and water safety generally by occupants of vessels, swimmers, fishermen, and others using the water.
(3) Placement and maintenance of navigation aids and markers, in conformity with governing provisions of law.

Prior to making any special regulations, the Commission shall investigate the water recreation and safety needs of the local water in question in accordance with any standards that may have been developed by the North Carolina Water Safety Committee. In making such investigation, the Commission in its discretion may hold public hearings on the regulations proposed and the general needs of the local water in question. After such investigation and application of standards, the Commission may in its discretion pass the special regulations requested, pass them in an amended form, or refuse to pass them. After passage, the Commission may amend or repeal the special regulations after first holding a public hearing.

(b) The agencies listed in this subsection may, but only after public notice, make formal application to the Wildlife Resources Commission for special regulations on local waters as to the matters listed in subsection (a) of this section. The agencies and waters in question are:

(1) Any subdivision of this State, with reference to waters within its territorial limits.
(2) The North Carolina Water Safety Committee, with reference to local areas of water defined by it which are found to be heavily used for water recreation purposes by persons from other areas of the State and as to which there is not coordinated local interest in regulation.

(c) The Uniform State 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 waters of North Carolina. The Wildlife Resources Commission is authorized to pass regulations implementing the marking system and may:

(1) Modify provisions as necessary to meet the special water recreational and safety needs of this State, provided that such modifications do not depart in any essential manner from the uniform standards being adopted in other states.
(2) Modify provisions as necessary to conform with amendments to the marking system that may be proposed for adoption by the states.
(3) Enact supplementary standards regarding design, construction, placement, and maintenance of markers.
(4) Enact clarifying regulations as to matters not covered with precision in the report of the Advisory Panel of State Officials.
(5) Enact implementing regulations as to matters left to State discretion in the report of the Advisory Panel of State Officials.
(6) Enact regulations forbidding or restricting the placement of markers either throughout the State or in certain classes or areas of waters without prior permission having been obtained from the Commission or some agency or official designated by the Commission.

It is unlawful to place or maintain any marker of the sort covered by the marking system in the waters of North Carolina that does not conform to or is in violation of the marking system and the implementing regulations of the Commission.

(d) Special regulations enacted under the authority of subsections (a) and (b) of this section shall supersede all local regulations in conflict or incompatible with such special regulations. As used in this subsection, "local regulations" shall include provisions relating to boating, water safety, or other recreational use of local waters in special local, or private acts, in ordinances or regulations of local governing bodies, or in ordinances or regulations of local water authorities. Ex-

cept as may be authorized in subsections (a) and (b) of this section, no local regulations may be made respecting the Uniform Waterway Marking System and its implementation or respecting supplemental safety equipment on vessels. (1959, c. 1064, s. 15; 1965, c. 394; 1969, c. 1093, s. 4.)

Editor's Note.—The 1969 amendment rewrote this section as previously amended in 1965.

§ 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.

(c) Any person who violates any provision of G.S. 75A-13.1 shall be guilty of a misdemeanor and upon conviction thereof shall be fined no more than twenty-five dollars ($25.00). (1959, c. 1064, s. 18; 1965, c. 634, s. 3; c. 793; 1969, c. 97, s. 2.)

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.

The 1969 amendment added subsection (c).

Section 3, c. 97, Session Laws 1969 provides that the act shall not apply to New Hanover and Pender counties.

ARTICLE 2.

North Carolina Water Safety Committee.

§ 75A-20. Creation of North Carolina Water Safety Committee.—There is hereby created the North Carolina Water Safety Committee to function as a continuing advisory and coordinative body with respect to the activities of the various public and private agencies, organizations, corporations, and individuals with responsibilities or interests relevant to the maintenance of an effective program of water safety in North Carolina. (1969, c. 1093, s. 3.)

State Government Reorganization.—The North Carolina Water Safety Committee was transferred to the Department of Natural and Economic Resources by § 143A-125, enacted by Session Laws 1971, c. 864.

§ 75A-21. Terms and appointment of members.—(a) Members of the Committee shall be appointed by the Governor so as to represent various viewpoints and interests respecting water safety that exist within the State. The membership of the Committee shall be not less than twenty-five nor more than fifty.

(b) Regular terms of members other than those designated by the Governor to serve on the executive committee shall be for periods of three years. In making initial appointments, the Governor shall appoint approximately one third of the members for one-year terms, another third for two-year terms, and the balance for three-year terms so as to achieve an overlapping of terms. In subsequent years as increases or decreases in the number of members of the Committee may occur the Governor shall appoint or reappoint members for such periods of less than three years as may be necessary to preserve the system of overlapping terms. Members representing the agencies listed in subsection (e) of this section and designated by the Governor to serve on the executive committee of the Committee shall serve at the pleasure of the Governor.

(c) Except as to representatives of the agencies listed in subsection (e) of this section, the Governor may decline to fill any vacancy that may occur on the Committee. As used in this subsection, "vacancy" includes termination of membership caused by expiration of a term as well as that caused by resignation, death, inability to serve, or termination of the appointment by the Governor.

(d) The Governor may terminate the appointment of any member serving for a specific term for cause. Cause for termination shall include the member's ceasing to hold the position or to be affiliated with the organization or agency by reason of which he was appointed to the Committee. The Governor in his discretion, however, taking into account the balance of representation of interest on the Committee and factors pertaining to its total size, may permit such member to continue to serve on the Committee by reason of the individual contributions he may make. Where a member of the executive committee serving at the pleasure of the Governor has been retained on the Committee despite his ceasing to represent one of the agencies listed in subsection (e) of this section, he shall lose his membership on the executive committee.

(e) In making his appointments the Governor shall provide for continuing membership on the Committee by at least one professional representative from each of the following agencies of the State:

(1) The Department of Conservation and Development.
(2) The Department of Public Instruction.
(3) The Department of Water Resources.
(4) The North Carolina Department of Local Affairs.
(5) The North Carolina Wildlife Resources Commission.
(6) The State Board of Health. (1969, c. 1093, s. 3; c. 1145, s. 1.)

Editor's Note.—"North Carolina Department of Local Affairs" has been substituted for "North Carolina Recreation Commission" in subsection (e) (4) pursuant to Session Laws 1969, c. 1145, s. 1.

§ 75A-22. Executive committee.—(a) Except as indicated in subsection (b) of this section, the executive committee of the Committee shall have full power to act on behalf of the Committee with regard to external affairs in the interim period between meetings of the Committee. The executive committee shall consist of the professional representatives from the agencies list in G.S. 75A-21 (e) plus six other members of the Committee selected by the Governor. Where there is more than one member from any of the listed agencies appointed to the Committee, the Governor shall designate which one is to serve on the executive committee.

(b) The Committee may not restrict the authorization to the executive committee to act on its behalf in any class of external affairs or repudiate any action

taken in its behalf except upon the vote of a majority of the full membership of the Committee. (1969, c. 1093, s. 3.)

§ **75A-23. Chairman.**—The Governor shall designate one of the agency members of the executive committee to serve both as chairman of the Committee and the executive committee. The chairman shall serve as such at the pleasure of the Governor. (1969, c. 1093, s. 3.)

§ **75A-24. Organization and meetings.**—(a) To the extent not in conflict with specific provisions of this article, the Committee may organize itself as it sees fit, specifically including selection and duties of other officers than the chairman, fixing dates and procedures for calling regular meetings, selection and tenure of chairmen and members of subcommittees, and the extent to which authority to act on internal matters may be delegated to the chairman or the executive committee.

(b) Regular meetings of the Committee shall be held at least twice each year. Special meetings may be held upon the call of:

(1) The chairman,
(2) Three members of the executive committee, or
(3) One third of the full membership of the Committee.

(c) Meetings of the executive committee shall be held upon the call of the chairman or upon the call of three of its members. To constitute a quorum of members attending a meeting of the Committee, there must be present at least eight members of the executive committee and one third of the balance of the members of the Committee. Eight members shall constitute a quorum for meetings of the executive committee, except that the votes of at least seven members shall be required to carry any matter in which the executive committee is acting on behalf of the Committee in regard to external affairs. (1969, c. 1093, s. 3.)

§ **75A-25. Administrative and staff support.**—Administrative and staff support for the Committee shall be provided by such State agency or agencies as may be designated by the Governor. (1969, c. 1093, s. 3.)

§ **75A-26. Local water safety committees.**—(a) In order that responsible State and local officials may consult with an advisory body as to the needs and desires of the public in matters of water recreation and safety in various local waters, local authorities may sponsor local water safety committees. When a local government or two or more local governments acting jointly determine that the interests of the public would be served by sponsorship of a local water safety committee, such local government or governments may sponsor a committee. As used in this section, the noun "sponsor" shall include a sponsoring local government or a sponsoring group of local governments acting jointly.

(b) Members of a local committee shall be selected by the sponsor to represent various viewpoints and interests respecting water recreation and safety in the locality concerned. The membership of the committee shall be not less than fifteen nor more than thirty-five, and members shall serve at the pleasure of the sponsor. Except where the charter granted by the sponsor may make specific provision, the members of a local committee shall select their officers, determine the need for subcommittees (if any), provide for times and places of regular meetings, and otherwise order the internal organization and administration of the committee. Special meetings may be held:

(1) Upon the call of such officers or members of the local committee as may be specified in the charter from the sponsor or the bylaws enacted by the committee.
(2) Upon the call of three members of the governing body or bodies of the sponsor.
(3) Upon the call of the chairman of the North Carolina Water Safety Committee.

(c) Where the sponsor finds that an existing organization or committee is sufficiently broadly based to represent the various community interests, it may sponsor (and at any time withdraw sponsorship of) the activities of such organization or committee relating to water recreation and safety in lieu of creating a separate local committee. In the event an existing organization or committee is sponsored, the membership restrictions of subsection (b) do not apply. The phrase "local committee" as used in this section shall include such sponsored existing organizations and committees as well as separate committees.

(d) Except as indicated below, members of a local committee shall serve without compensation from the sponsor. Public officers and employees who are acting within the scope and course of their employment, however, may receive such travel and subsistence allowance as authorized by law when attending meetings, whether as members or observers, or otherwise assisting or participating in the affairs of a local committee. Within the bounds set by governing provisions of the law generally, a sponsor may also provide administrative and staff services to a local committee and may underwrite or finance its projects which are carried out to the benefit of water recreation and safety in the area concerned.

(e) At the time of sponsorship, or withdrawal of sponsorship, of a local committee, the sponsor shall notify the following persons of the action taken:

(1) The chairman of the North Carolina Water Safety Committee.

(2) The Executive Director of the North Carolina Wildlife Resources Commission.

(f) All meetings of separately created local committees shall be open to the public. Where an existing organization or committee has received sponsorship, all its meetings devoted to carrying out the advisory functions of a local committee shall be open to the public.

(g) Members of a local committee are under an obligation:

(1) To keep themselves informed as to problems of water recreation and safety in their area.

(2) To study such problems concerning water recreation and safety as may be referred to them by their sponsor or by the chairman of the North Carolina Water Safety Committee.

(3) To make reports from time to time, either on their own motion or in response to a request for a study, on problems of water recreation and safety, and with suggestions for remedies where such are indicated and feasible. Such reports may be made to the sponsor, the chairman of the North Carolina Water Safety Committee, the Executive Director of the North Carolina Wildlife Resources Commission, or any other public or private person, agency, firm, corporation, or organization with the power to effect improvements in the level of water recreation and safety available to the public.

(4) To take part in and, where necessary, to help coordinate programs of public education in the field of water safety. (1969, c. 1093, s. 3.)

Chapter 76.

Navigation.

ARTICLE 1.

Cape Fear River.

§ 76-1. Board of Commissioners of Navigation and Pilotage.

State Government Reorganization.—The Board of Commissioners of Navigation and Pilotage was transferred to the Department of Transportation and Highway Safety by § 143A-103, enacted by Session Laws 1971, c. 864.

§ 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.

§ 76-13. When employment compulsory. — Every foreign vessel and every United States vessel sailing under register, over 60 gross tons, shall take a state-licensed pilot from sea to Southport, and from Southport to sea; the employment of pilots from Southport to Wilmington and from Wilmington to Southport is optional, but any foreign vessel and United States flag vessel under register taking a pilot from Southport to Wilmington or from Wilmington to Southport shall employ a state-licensed pilot. (1921, c. 79, s. 13; C. S., s. 6943(m); 1927, c. 158, s. 5; 1959, c. 1042; 1971, c. 558, s. 1; c. 861, s. 1.)

Editor's Note.—
The first 1971 amendment rewrote this section so as to eliminate provisions as to rates of pilotage.

The second 1971 amendment, effective July 1, 1971, repealed the first 1971 amendatory act and again rewrote the section.

For present provisions as to rates of pilotage, see § 76-14.

§ 76-14. Rates of pilotage.—(a) Pilotage charges for vessels inbound or outbound shall be based on the overall length and draft of such vessel in general classifications as follows:

(1) Overall length less than 550 feet ..... $10.50 per draft ft.
(2) Overall length from 550 feet but less than 750 feet .. $12.00 per draft ft.
(3) Overall length 750 feet and over ..... $13.50 per draft ft.

(b) Overall length is the distance between the forward and after extremities of the vessel.

(c) The measurements described herein shall be in United States measurements of feet and inches and shall be furnished to the pilot by the master of the vessel or her agent for the purpose of computation of pilotage fees.

(d) There shall be a minimum of 10 feet draft for each vessel in determining the pilotage charges.

(e) Beginning July 1, 1972, the pilotage charges as set forth in the length classifications above shall be increased one dollar ($1.00) for each such classification.

(f) The Board of Commissioners of Navigation and Pilotage for the Cape Fear River and Bar shall determine the amount to be charged for a fraction of a draft foot not in conflict with the provisions of this section, and they shall be the sole arbitrators of any question arising concerning any pilotage charge.

(g) The charge for towing vessels with a tow requiring one pilot shall be based on the vessel with the deepest draft in the tow. The charge for towing vessels with a tow requiring two pilots (one on the towing vessel and one on the vessel in tow) shall be the regular pilotage fee for each vessel.

(h) The charge for a pilot's service for shifting any vessel shall be fifty dollars ($50.00). A vessel shifting "dead" (without power) will be charged double the regular shifting fee.

(i) The charge for detention of a pilot on board because of weather conditions preventing pilot from being removed shall be fifty dollars ($50.00) per day of detention, plus the furnishing of quarters equal to those of a deck officer, plus the cost of first class transportation for a return trip to Wilmington.

(j) A charge of twenty dollars ($20.00) shall be made for a cancellation not due to weather conditions when the cancellation is made less than two hours before the pilot was ordered to board the vessel. If there is a delay of more than one-half hour in sailing, not caused by weather conditions, a charge of ten dollars ($10.00) per hour, or fraction thereof, shall be made computed from the scheduled sailing time.

(k) All vessels calling at either of the Cape Fear River ports which require pilotage will pay full pilotage rates regardless of which port or portion of a port at which they call. (1921, c. 79, ss. 13, 14; C. S., ss. 6943(m), (n); 1927, c. 158, s. 5; 1959, c. 1042; 1971, c. 558, s. 2; c. 861, s. 2.)

Editor's Note. — The first 1971 amendment rewrote this section, which formerly provided only for pay for retention of pilots.

The second 1971 amendment, effective July 1, 1971, repealed the first 1971 amendatory act, and again rewrote the section.

Prior to the amendments, rates of pilotage were covered by § 76-13.

ARTICLE 5.

General Provisions.

§ 76-40. Navigable waters; certain practices regulated.—(a) It shall be unlawful for any person, firm or corporation to place, deposit, leave or cause to be placed, deposited or left, either temporarily or permanently, any trash, refuse, rubbish, garbage, debris, rubble, scrapped vehicle or equipment or other similar waste material in or upon any body of navigable water in this State; "waste material" shall not include spoil materials lawfully dug or dredged from navigable

waters and deposited in spoil areas designated by the Department of Conservation and Development; violation of this section shall constitute a misdemeanor, punishable by a fine of up to five hundred dollars ($500.00) or imprisonment for up to six months, or both, in the discretion of the court.

(b) No person, firm or corporation shall erect upon the floor of, or in or upon, any body of navigable water in this State, any sign or other structure, without having first secured a permit to do so from the appropriate federal agencies (which would include a permit from the State of North Carolina) or from the Department of Administration, or from the agency designated by the Department to issue such permit. Provided, however, this subsection shall not apply to commercial fishing nets, fish offal, ramps, boathouses, piers or duck blinds placed in navigable waters. Any person, firm or corporation erecting such sign or other structure without a proper permit or not in accordance with the specification of such permit shall be guilty of a misdemeanor and upon conviction shall be fined up to five hundred dollars ($500.00) or imprisoned for up to six months, or both, in the discretion of the court. The State may immediately proceed to remove or cause to be removed such unlawful sign or structure after five days' notice to the owner or erector thereof and the cost of such removal by the State shall be payable by the person, firm or corporation who erected or owns the unlawful sign or other structure and the State may bring suit to recover the costs of the removal thereof.

(c) Whenever any structure lawfully erected upon the floor of, or in or upon, any body of navigable water in this State, is abandoned, such structure shall be removed by the owner thereof and the area cleaned up within thirty days of such abandonment; failure to comply with this section shall constitute a misdemeanor and upon conviction the owner of the abandoned structure shall be fined up to five hundred dollars ($500.00) or imprisoned for not over six months, or both, in the discretion of the court. The State may, after ten days' notice to the owner or erector thereof, remove the abandoned structure and have the area cleaned up and the cost of such removal and cleaning up by the State shall be payable by the owner or erector of the abandoned structure and the State may bring suit to recover the costs thereof.

(d) For purposes of this section, the term "navigable waters" shall not include any waters within the boundaries of any reservoir, pond or impoundment used in connection with the generation of electricity, or of any reservoir project owned or operated by the United States.

(e) The provisions of this section, in the coastal waters of this State, shall be enforced by the Department of Conservation and Development. In the inland waters of the State, the provisions of this section shall be enforced by the Wildlife Resources Commission. The Department of Conservation and Development and the Wildlife Resources Commission shall cooperate with the Department of Water and Air Resources in the enforcement of this section. (1784, c. 206, s. 11; 1811, c. 839; 1833, c. 146; R. S., c. 88, ss. 23, 24, 45; 1842, c. 65, s. 4; 1846, c. 60, s. 3; R. C., c. 85, ss. 40, 41; Code, ss. 3537, 3538; Rev., s. 3560; C. S., s. 6891; 1969, c. 792.)

Editor's Note. — The 1969 amendment rewrote this section.

Chapter 77.

Rivers and Creeks.

ARTICLE 1.

Commissioners for Opening and Clearing Streams.

§ 77-8. Repairing breaks.—Wherever any stream of water which is used to propel machinery shall be by freshet or otherwise diverted from its usual channel so as to impair its power as used by any person, such person shall have power to repair the banks of such stream at the place where the break occurs, so as to cause the stream to return to its former channel. (1879, c. 53, s. 1; Code, s. 3716; Rev., s. 5305; C. S., s. 7372.)

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

§ 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.

ARTICLE 2.

Obstructions in Streams.

§ 77-14. Obstructions in streams and drainage ditches.—If any person, firm or corporation shall fell any tree or put any slabs, stumpage, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine or ditch, or in any other outlet which serves to remove water from any land whatsoever whereby the natural and normal drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall be guilty of a misdemeanor and upon conviction thereof shall be fined up to five hundred dollars ($500.00) or imprisoned for up to six months, or both, in the discretion of the court: Provided, however, nothing herein shall prevent the construction of any dam or weir not otherwise prohibited by any valid local or State statute or regulation. (1953, c. 1242; 1957, c. 524; 1959, cc. 160, 1125; 1961, c. 507; 1969, c. 790, s. 1.)

Editor's Note.—

The 1969 amendment rewrote this section.

Session Laws 1969, c. 790, s. 2, provides: "G.S. 77-14, as hereby rewritten, shall apply to all counties, and all exemptions from said section are hereby repealed."

Chapter 78.

Securities Law.

§ 78-2. Definitions.

The legislature has shown no intent to include both principal and agent transactions within the word "sale." Lane v. Griswold, 273 N.C. 1, 159 S.E.2d 338 (1968).

Meaning of "Sale".—See Lane v. Griswold, 273 N.C. 1, 159 S.E.2d 338 (1968).

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).

Cited in Lane v. Griswold, 273 N.C. 1, 159 S.E.2d 338 (1968).

§ 78-4. Transactions exempted from operation of this Chapter.— Except as hereinafter provided, the provisions of this Chapter shall not apply to the sale or the offering for sale of any security in any of the following transactions, viz.:

(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.

(9) Subscriptions for shares of the capital stock of a corporation or subscriptions for interests in a limited partnership, prior to the incorporation of such corporation or recording of the certificate of such limited partnership, when no expense is incurred, and no commission,

compensation or remuneration is paid or given by the purchaser for, or in connection with, the sale or disposition of such securities and the corporation or partnership is organized or the subscription price refunded within six months after the date of the subscription.

(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; 1971, c. 572, s. 1.)

Cross Reference.—See note to § 78-3.

Editor's Note.—

The 1967 amendment rewrote subdivision (7) and added subdivision (14).

The 1971 amendment rewrote subdivision (9), making it applicable to subscriptions for interests in limited partnerships, inserting "by the purchaser" near the middle of the subdivision, and adding, at the end of the subdivision, "and the corporation or partnership is organized or the subscription price refunded within six months after the date of the subscription."

As the rest of the section was not changed by the amendments, only the opening paragraph of the section and subdivisions (7), (9) and (14) are set out.

Cited in Lane v. Griswold, 273 N.C. 1, 159 S.E.2d 338 (1968).

§ 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.

The operative language of this section confines its prohibition and prescribes the jurisdictional limitations of the statute to sales within North Carolina. Lane v. Griswold, 273 N.C. 1, 159 S.E.2d 338 (1968).

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. — No dealer or salesman shall carry on business in the State of North Carolina as such dealer or salesman, or sell securities, including any securities exempted under the provisions of G.S. 78-3, unless he has been registered as dealer or salesman in the office of the Secretary of State pursuant to the provisions of this section. Every applicant for registration shall file in the office of the Secretary of State, pursuant to the provisions of this section, an application in writing, duly signed and sworn to, in such form as the Secretary of State may prescribe, giving particulars concerning the business reputation of the applicant. Every applicant for registration as a dealer, or for the renewal of such registration, shall be required to be registered as a dealer with the Securities and Exchange Commission, as a prerequisite for registration in this State, except a person dealing exclusively in securities exempt from registration under subdivision (1) of G.S. 78-3. A dealer not either registered with the Securities and Exchange Commission or supervised and examined by an agency of the

government of the United States, or of the State of North Carolina, shall file annually within 120 days after the end of the fiscal year of such dealer, with the Secretary of State a financial statement of condition duly certified by an independent certified public accountant. Dealers not supervised as herein provided may be examined at any time by the Secretary of State, or his representative, upon evidence satisfactory to the Secretary of State of the insolvency or imminent danger of insolvency of such dealer. The Secretary of State, in his discretion, may require that the applicant shall have been a bona fide resident of the State of North Carolina for a term not to exceed two years prior to the filing of the application. The names and addresses of all persons approved for registration as dealers or salesmen shall be recorded in a register of dealers and salesmen kept in the office of the Secretary of State, which shall be open to public inspection. Every registration under this section shall expire on the thirty-first day of March in each year, but the same may be renewed. The fee for such registration and for each annual renewal thereof shall be fifty dollars ($50.00) in the case of dealers, and ten dollars ($10.00) in the case of salesmen. Registration may be refused or a registration granted may be cancelled by the Secretary of State if, after reasonable notice and a hearing, the Secretary of State determines that such applicant or dealer or salesman so registered

(1) Has violated any provision of this Chapter or any regulation made hereunder; or

(2) Has made a material false statement in the application for registration; or

(3) Has been guilty of a fraudulent act in connection with any sale of securities in the State of North Carolina, or has been or is engaged in making fictitious or pretended sales or purchases of any such securities or has been engaged in any practice or transaction or course of business relating to the purchase or sale of securities which is fraudulent or in violation of law; or

(4) Has demonstrated his unworthiness to transact the business of dealer or salesman; or

(5) Has ceased to be qualified for registration under the terms of this section; or

(6) Shall be insolvent or in imminent danger of insolvency, or shall have failed to meet such dealer's financial obligations in the ordinary course of business.

It shall be sufficient cause for refusal or cancellation of registration in the case of a partnership, corporation or unincorporated association or trust estate, if any member of the partnership, or any officer or director of the corporation, association or trust estate has been guilty of any act or omission which would be cause for refusing or cancelling the registration of an individual dealer or salesman. The word "dealer" as used in this section shall include every person other than a salesman, who in the State of North Carolina engages, either for all or part of his time, directly or through an agent, in the business of offering for sale, selling or otherwise dealing in securities, including securities exempted under the provisions of G.S. 78-3, or of purchasing or otherwise acquiring such securities from another person with the purpose of reselling them or of offering them for sale to the public for a commission or at a profit, or who deals in futures on market quotations of prices or values of any securities, or accepts margins on prices or values of said securities. The word "salesman," as used in this section shall include every person employed, appointed or authorized by another person to sell securities in any manner in the State of North Carolina. No person shall be registered as a salesman except upon the application of the person on whose behalf such salesman is to act. It shall be unlawful for any person required to register under the provisions of this section to sell any security to any person in the State of North Carolina without having registered, or after such registration has expired or been cancelled and not renewed.

Provided, however, that employees of a company, or of a company directly con-

trolling such company, or the general agent of a domestic corporation, securities of which are exempted under the provisions of G.S. 78-3, may sell or solicit or negotiate for the sale or purchase of any such securities of such company in the territory served by such company or in which it operates without being considered as salesmen or dealers within the meaning of this Chapter and without being required to register under its provision.

Life insurance companies and their agents who are licensed and regulated by the Commissioner of Insurance in the offering and sale of variable annuity contracts shall be exempt from the registration provisions of this section.

The partners of a partnership and the executive officers of a corporation or other association registered as a dealer may act as salesmen during such time as such partnership, corporation, or association is so registered without further registration as salesmen. Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers or directors of any dealer may be made from time to time by written application setting forth the facts with reference to such change. (1925, c. 190, s. 19; 1927, c. 149, s. 19; 1955, c. 436, s. 9; 1959, c. 1122; 1971, c. 831, s. 1.)

Editor's Note.—

The 1971 amendment added the next-to-last paragraph.

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

§ 78-22. Remedies.

This section does not apply to an agent for the purchase of securities. Lane v. Griswold, 273 N.C. 1, 159 S.E.2d 338 (1968).

Applied in Lane v. Griswold, 273 N.C. 18, 159 S.E.2d 350 (1968).

§ 78-23. Violation of Chapter; punishment.

(g1) Whoever shall sell or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State under the claim of an exemption permitted by any subsection of G.S. 78-3 or G.S. 78-4, after having been notified by the Secretary of State to cease and desist the sale of such security pending investigation, findings and enforcement pursuant to G.S. 78-16, shall be deemed guilty of a violation of this Chapter, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(1971, c. 572, s. 2.)

Editor's Note.—

The 1971 amendment added subsection (g1).

As the rest of the section was not changed by the amendment, only subsection (g1) is set out.

"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).

Cited in Lane v. Griswold, 273 N.C. 1, 159 S.E.2d 338 (1968).

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.

Editor's Note.—

For note on the law of unfair competition in North Carolina, see 46 N.C.L. Rev. 856 (1968).

§ 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 cor-

poration, 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:

(a) Goods.—

1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, animal equipments, portfolios, and pocketbooks.
4. Abrasives and polishing materials.
5. Adhesives.
6. Chemicals and chemical compositions.
7. Cordage.
8. Smokers' articles, not including tobacco products.
9. Explosives, firearms, equipments, and projectiles.
10. Fertilizers.
11. Inks and inking materials.
12. Construction materials.
13. Hardware and plumbing and steam-fitting supplies.
14. Metals and metal castings and forgings.
15. Oils and greases.
16. Protective and decorative coatings.
17. Tobacco products.
18. Medicines and pharmaceutical preparations.
19. Vehicles.
20. Linoleum and oiled cloth.
21. Electrical apparatus, machines, and supplies.
22. Games, toys, and sporting goods.
23. Cutlery, machinery, and tools, and parts thereof.
24. Laundry appliances and machines.
25. Locks and safes.
26. Measuring and scientific appliances.
27. Horological instruments.
28. Jewelry and precious-metal ware.

29. Brooms, brushes, and dusters.
30. Crockery, earthenware, and porcelain.
31. Filters and refrigerators.
32. Furniture and upholstery.
33. Glassware.
34. Heating, lighting, and ventilating apparatus.
35. Belting, hose, machinery packing, and nonmetallic tires.
36. Musical instruments and supplies.
37. Paper and stationery.
38. Prints and publications.
39. Clothing.
40. Fancy goods, furnishings, and notions.
41. Canes, parasols, and umbrellas.
42. Knitted, netted and textile fabrics, and substitutes therefor.
43. Thread and yarn.
44. Dental, medical, and surgical appliances.
45. Soft drinks and carbonated waters.
46. Foods and ingredients of foods.
47. Wines.
48. Malt beverages and liquors.
49. Distilled alcoholic liquors.
50. Merchandise not otherwise classified.
51. Cosmetics and toilet preparations.
52. Detergents and soaps.

(b) Services.—

100. Miscellaneous.
101. Advertising and business.
102. Insurance and financial.
103. Construction and repair.
104. Communications.
105. Transportation and storage.
106. Material treatment.
107. 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 81.

Weights and Measures.

Article 4.

Public Weighmasters.

§ 81-36. Public weighmaster defined; to be licensed. — Any person 18 years of age or older, either for himself or as a servant or agent of any other person, firm, or corporation, or who is elected by popular vote, who shall weigh, or measure, or count, or who shall ascertain from, or record the indications or readings of, a weighing, or measuring, or recording, device or apparatus for any other person, firm, or corporation, and declare the weight, or measure, or count, or reading or recording to be the true weight, or measure, or count, or reading, or recording of any commodity, thing, article, or product upon which the purchase, or sale, or exchange, is based, and make a charge for, or collect pay, a fee, or any other compensation for such act, shall issue a certificate of weight, or measure, or count, in accordance with the provisions of this Article, shall be licensed and shall be known as a public weighmaster in the State of North Carolina. (1939, c. 285, s. 1; 1945, c. 1067; 1971, c. 1085, s. 1.)

Editor's Note.— The 1971 amendment inserted "18 years of age or older" near the beginning of the section.

Chapter 82.

Wrecks.

§§ 82-1 to 82-18: Repealed by Session Laws 1971, c. 882, s. 5, effective July 1, 1971.

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

Chapter 83.

Architects.

§ 83-1. Definitions.

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

Cited in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 83-8. Examination and certificate of applicant. — Any person hereafter desiring to be registered and admitted to the practice of architecture in the State shall make a written application for examination to the North Carolina Board of Architecture, on a form prescribed by the Board, giving his name, age (which shall not be less than 18 years), his residence, and such evidence of his qualification and proficiency as may be prescribed by said Board, which application shall be accompanied by a fee in such amount as may be established by the Board, not however, in excess of twenty-five dollars ($25.00) for residents of this State and fifty dollars ($50.00) for nonresidents. If said application is satisfactory to the Board, then the applicant shall be entitled to an examination to determine his qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to practice architecture in North Carolina. Any person failing to pass such examination may be reexamined at any regular meeting of the Board at a fee to be established by the Board, such fee not to exceed twenty-five dollars ($25.00). (1915, c. 270, s. 3; 1919, c. 336, s. 1; C. S., s. 4992; 1957, c. 794, s. 7; 1971, c. 1231, s. 1.)

Editor's Note.—
The 1971 amendment substituted "18" for "twenty-one" in the first sentence.

§ 83-9. Refusal, revocation, or suspension of certificates.

Cited in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 83-11. Annual renewal of certificate; fee.

Applied in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 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.

Except as provided for in chapter 55B of the General Statutes of North Carolina, it shall be unlawful for any corporation to practice or offer to practice architecture in this State. (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; 1969, c. 718, s. 21.)

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.

The 1969 amendment, effective Jan. 1, 1970, added the last 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 clarly 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).

Cited in Snow v. North Carolina Bd. of Arch., 273 N.C. 559, 160 S.E.2d 719 (1968).

§ 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.

§ 84-1. Oaths taken in open court.—Attorneys before they shall be admitted to practice law shall, in open court before a justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court, take the oath prescribed for attorneys, and also the oaths of allegiance to the State, and to support the Constitution of the United States, prescribed for all public officers, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken may act as attorneys during their good behavior. (1777, c. 115, s. 8; R. C., c. 9, s. 3; Code, s. 19; Rev., s. 209; C. S., s. 197; 1969, c. 44, s. 58.)

Editor's Note.—The 1969 amendment substituted "justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court" for "justice of the supreme or judge of the superior court."

§ 84-2. Persons disqualified.—No justice, judge, full-time solicitor, full-time assistant solicitor, prosecutor, full-time assistant prosecutor, clerk, deputy or assistant clerk of the General Court of Justice, 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. (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; 1969, c. 44, s. 59.)

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.

The 1969 amendment rewrote the portion of the first sentence preceding "nor register of deeds" and deleted the former third sentence which read "This section shall not apply to Confederate soldiers."

§ 84-2.1. "Practice law" defined.

Editor's Note.—

For article "Transferring North Carolina Real Estate Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

§ 84-4. Persons other than members of State Bar prohibited from practicing law.—It shall be unlawful for any person or association of persons, except members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys at law, to appear as attorney or counselor at law in any action or proceeding in any court in this State or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Employment

Security Commission; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or associtaion of persons except members of the Bar, for or without a fee or consideration, to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organize corporations or prepare for another person, firm or corporation, any other legal document. Provided, that nothing herein shall prohibit any person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law. The provisions of this section shall be in addition to and not in lieu of any other provisions of chapter 84. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of chapter 55B of the General Statutes of North Carolina. (1931, c. 157, s. 1; 1937, c. 155, s. 1; 1955, c. 526, s. 1; 1969, c. 718, s. 19.)

Editor's Note.—

The 1969 amendment, effective Jan. 1, 1970, added the proviso to the last sentence.

Applied in Resort Dev. Co. v. Phillips, 9 N.C. App. 158, 175 S.E.2d 782 (1970).

§ **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, or the North Carolina Utilities Commission may, on motion, be admitted to practice in the General Court of Justice or North Carolina Utilities Commission 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 member 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; 1971, c. 550, s. 1.)

Editor's Note.—The 1971 amendment, effective Oct. 15, 1971, inserted "or the North Carolina Utilities Commission" and "or North Carolina Utilities Commission" in the opening paragraph.

When Attorneys Not Considered as Participating Attorneys. — Where two attorneys purportedly appearing for defendants in appeal from criminal conviction are not members of the North Carolina Bar and are not authorized to appear in a case in compliance with this section, they are not considered as participating attorneys. State v. Daughtry, 8 N.C. App. 318, 174 S.E.2d 76 (1970).

Applied in Resort Dev. Co. v. Phillips, 9 N.C. App. 158, 175 S.E.2d 782 (1970).

§ 84-4.2. Summary revocation of permission granted out-of-state attorneys to practice.—Permission granted under the preceding section [G.S. 84-4.1] may be summarily revoked by the General Court of Justice or North Carolina Utilities Commission, on its own motion and in its discretion. (1967, c. 1199, s. 2; 1971, c. 550, s. 2.)

Editor's Note.—The 1971 amendment, effective Oct. 15, 1971, inserted "or North Carolina Utilities Commission."

§ 84-5. Prohibition as to practice of law by corporation.—It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Caroline Industrial Commission, Utilities Commission, or the Employment Security Commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

(1) A corporation authorized and licensed to act in a fiduciary capacity shall not;

a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.

b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.

c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.

(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.
b. Preparing and publishing notice of administration to creditors.
c. Handling formal court proceedings.
d. Drafting legal papers or giving legal advice to spouses concerning dissent from their spouses' wills.
e. Resolving questions of domicile and residence of a decedent.
f. Handling proceedings involving year's allowances of widows and children.
g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
h. Drafting instruments releasing deeds of trust.
i. Drafting assignments of rent.
j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
    1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
    2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
    3. Handling petitions to the tax court.
l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
m. In connection with the administration of an estate or trust:
    1. Making application for letters testamentary or letters of administration.
    2. Abstracting or passing upon title to property.
    3. Handling litigation relating to claims by or against the estate or trust.
    4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.

(3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:

a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.
b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.
c. In matters involving estate and inheritance taxes and federal and state income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corpora-

tion to perform legal services in connection with that particular estate or matter.

d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing. (1931, c. 157, s. 2; 1937, c. 155, s. 2; 1955, c. 526, s. 2; 1969, c. 718, s. 20; 1971, c. 747.)

Editor's Note.—

The 1969 amendment, effective Jan. 1, 1970, added the second proviso at the end of the first paragraph.

The 1971 amendment added all of this section following the first paragraph.

For comment on tax and corporate aspects of professional incorporation in North Carolina, see 48 N.C.L. Rev. 573 (1970).

Article 3.

Arguments.

§ 84-14. Court's control of argument.

Editor's Note. — Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967), cited in the note below, was commented on in 47 N.C.L. Rev. 262 (1968).

Discretion of Court.—

In accord with 1st paragraph in original. See In re Will of Farr, 7 N.C. App. 250, 172 S.E.2d 78 (1970).

Conduct of counsel in presenting their causes to the jury is left largely to the discretion of the trial judge. In re Will of Farr, 7 N.C. App. 250, 172 S.E.2d 78 (1970).

When the remarks of counsel are not warranted by either the evidence or the law, or are calculated to mislead or prejudice the jury, it is the duty of the judge to interfere. In re Will of Farr, 277 N.C. 86, 175 S.E.2d 578 (1970).

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).

Counsel May Argue, etc.—

In accord with 1st paragraph in original. See In re Will of Farr, 7 N.C. App. 250, 172 S.E.2d 78 (1970).

The right to argue the whole case has been expressly conferred by statute. In re Will of Farr, 7 N.C. App. 250, 172 S.E.2d 78 (1970).

Under this section counsel's right to argue law generally to the jury has been upheld or expressly recognized. In re Will of Farr, 7 N.C. App. 250, 172 S.E.2d 78 (1970).

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).

Commenting on Testimony.—The testimony of a witness being competent, material, and relevant, there can be no doubt of the right of counsel to make proper comment upon it in his address to the jury. In re Will of Farr, 7 N.C. App. 250, 172 S.E.2d 78 (1970).

This section does not authorize counsel to argue law which is not applicable to the issues, for such arguments could only lead to confusion in the minds of the jury. In re Will of Farr, 277 N.C. 86, 175 S.E.2d 578 (1970).

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).

Stated in Continental Ins. Co. v. Foard, 9 N.C. App. 630, 177 S.E.2d 431 (1970).

ARTICLE 4.

North Carolina State Bar.

§ 84-16. Membership and privileges.—The membership of the North Carolina State Bar shall consist of three classes, active, honorary and inactive.

The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the State of North Carolina, who shall have paid the membership dues hereinafter specified, unless classified as an inactive member by the council as hereinafter provided. No person other than a member of the North Carolina State Bar shall practice in any court of the State, except foreign attorneys as provided by statute.

The honorary members shall be:

(1) All justices, judges, full-time solicitors, and full-time prosecutors of the General Court of Justice who, at the time of their election or appointment, are members in good standing of the North Carolina State Bar;

(2) All former justices and judges of the above named courts resident in North Carolina, but not engaged in the practice of law;

(3) The judges of the district courts of the United States and of the circuit court of appeals resident in North Carolina.

Inactive members shall be all persons found by the council to be not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document, or law.

Only active members shall be required to pay annual membership fees, and shall have the right to vote. A member shall be entitled to vote at all annual or special meetings of the North Carolina State Bar, and at all meetings of and elections held by the bar of each of the judicial districts in which he resides: Provided, that if he desires to vote with the bar of some district in which he practices, other than that in which he resides, he may do so upon filing with the resident judge of the district in which he desires to vote, and with the resident judge of the district in which he resides (and, after the North Carolina State Bar shall have been organized as hereinafter set forth, with the secretary-treasurer of the North Carolina State Bar), his statement in writing that he desires to vote in such other district: Provided, however, that in no case shall he be entitled to vote in more than one district. (1933, c. 210, s. 2; 1939, c. 21, s. 1; 1941, c. 344, ss. 1, 2, 3; 1969, c. 44, s. 60; c. 1190, s. 52.)

Editor's Note.—

The first 1969 amendment rewrote the third paragraph.

The second 1969 amendment, effective July 1, 1969, rewrote subdivision (1) of the third paragraph as rewritten by the first amendment.

§ 84-18.1. Membership fees of district bars.—Any district bar may from time to time by a majority vote of its membership prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. Such fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by § 84-34 for active members of the North Carolina State Bar. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-treasurer. The name of each active member of a district bar who shall be more than twelve (12) full calendar months in arrears in the payment of any such fee shall be furnished by the secretary-treasurer of the district bar to the council of the North Carolina State Bar. In the exercise of its powers as set forth in § 84-23, the council shall thereupon take such disciplinary or other action with reference to the delinquent as it considers necessary and proper. (1969, c. 241.)

§ 84-20. Compensation of councilors.—The members of the council and members of committees when actually engaged in the performance of their duties, including committees sitting upon disbarment proceedings, shall receive as compensation not exceeding ten dollars ($10.00) per day for the time spent in attending meetings, and shall receive actual expenses of travel and subsistence while engaged in his duties provided that for transportation by use of private automobile the expense of travel shall not exceed ten cents (10¢) per mile. The council shall determine per diem, subsistence and mileage to be paid. Such allowance as may be fixed by the council shall be paid by the secretary-treasurer of the North Carolina State Bar upon certified statements presented by each member. (1933, c. 210, s. 6; 1935, c. 34; 1953, c. 1310, s. 2; 1971, c. 13, s. 1.)

Editor's Note.— The 1971 amendment substituted "ten cents (10¢)" for "seven cents" near the end of the first sentence.

§ 84-21. Organization of council; publication of rules, regulations and bylaws.

Promulgation May Be Refused. — This section empowers the Chief Justice of the Supreme Court to determine whether rules of the Board of Law Examiners are in compliance with this Article, of which § 84-24 is a part, and to refuse them promulgation if they do not so comply. Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (E.D.N.C. 1970).

§ 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.

For note on "Admission to the Bar — 'Good Moral Character' — Constitutional Protections," see 45 N.C.L. Rev. 1008 (1967).

The Board of Law Examiners is an "administrative agency," with both judicial and delegated legislative powers. Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (E.D.N.C. 1970).

Rule-Making Power Delegated. — The North Carolina General Assembly, in this section, has delegated its rule-making power to the Board of Law Examiners and has determined that the Board shall also apply its own rules "to the particular case." Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (E.D.N.C. 1970).

§ 84-26. Pay of Board of Law Examiners.—Each member of the Board of Law Examiners shall receive the sum of fifty dollars ($50.00) for his services in connection with each examination and shall receive his actual expenses of travel and subsistence while engaged in duties assigned to him, provided that for transportation by the use of private automobile the expense of travel shall not exceed ten cents (10¢) per mile. (1935, c. 33, s. 2; 1937, c. 35; 1953, c. 1310, s. 3; 1971, c. 13, s. 2.)

Editor's Note.—

The 1971 amendment increased the mileage from seven to ten cents (10¢) per mile.

§ 84-28. Discipline and disbarment.

(3) May invoke the processes of the courts in any case in which they deem it desirable to do so and formulate rules of procedure governing the trial of any such person. Such rules shall make provision for:

a. Setting forth the charges in the form required for a complaint in a civil action in the superior court.

b. Notice of the charges by the service upon the person charged of a copy of the said complaint. Such service may be made by any officer authorized to serve legal processes wherever the person charged may be found.

c. The right of the defendant to file a written and verified answer in which he may plead any defense to the merits of the charge, the sufficiency of the charge as alleged, or any other defense available to him. All defenses must be asserted by verified answer.

d. The right of the person charged to demand a trial:

1. In the superior court at a regular term for the trial of civil cases by a judge and a jury, or by written agreement of all parties trial by jury may be waived and the facts found by the judge, or

2. By a committee of not less than three members of the Bar who are not members of the council and are actively practicing in the State, such committee to be designated by the Supreme Court, or

3. By a committee of not less than three members of the council. The election permitted shall be made in the answer, and if no election is made in the answer the person charged shall be conclusively deemed to have elected to be tried by a committee of the council. If the person charged shall not elect to be tried in the superior court in term as above provided, he shall be conclusively deemed to have waived all right to a trial by jury.

e. The certification, if the person charged shall elect to be tried in the superior court, of the original complaint and answer shall be made to the clerk of the superior court of the county in which such person shall reside if he resides in this State, or to the clerk of the Superior Court of Wake County if he does not reside in this State. The proceeding shall not be subject to dismissal if certification is made to the wrong county, but the person charged may move in the superior court to which certification is made for removal to the proper county. After certification all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions, with right of appeal to the appellate division.

f. For the trial of the person charged before a committee (if trial by a jury is waived) selected in accordance with the foregoing provisions, which trial shall conform as nearly as practicable to the procedure provided by law before referees in references by consent with the right to appeal to the superior court by the filing of exceptions with the council and from order or judgment of the council, the entire record shall be filed with the clerk of the superior court of the county in which the person charged resides if he resides within the State, or in Wake County if the person charged does not reside within the State, and thereafter all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, but neither party shall be entitled to a trial by jury. Both parties shall have the

right to appeal to the appellate division in accordance with the procedure permitting appeals in civil actions.

(1969, c. 44, s. 61.)

Editor's Note.—

The 1969 amendment substituted "appellate division" for "Supreme Court" at the end of paragraph e and in the last sentence of paragraph f of subdivision (3).

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

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).

Disciplinary Proceedings Not Barred by Limitations.—Disciplinary proceedings are not barred by the general statute of limitations. Nor is a disciplinary proceeding barred because it is grounded on acts that also constitute a crime that cannot be prosecuted in a criminal action because of limitations. North Carolina State Bar v. Temple, 2 N.C. App. 91, 162 S.E.2d 649 (1968).

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).

Cited in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969).

§ 84-31. Designation of prosecutor; compensation. — Whenever charges shall have been preferred against any member of the Bar, and the council shall have directed a hearing upon the charges, it shall also designate some member of the Bar to prosecute said charges in such hearings as may be held, including hearing upon appeals in the superior and appellate court division of the General Court of Justice. The council may allow the attorney performing such services at its request such compensation as it may deem proper. (1933, c. 210, s. 14; 1969, c. 44, s. 62.)

Editor's Note.—The 1969 amendment substituted "appellate court division of the General Court of Justice" for "supreme courts" at the end of the first sentence.

§ 84-33. Annual and special meetings. — There shall be an annual meeting of the North Carolina State Bar, open to all members in good standing, to be held at such place and time after such notice (but not less than thirty days) as the council may determine, for the discussion of the affairs of the Bar and the administration of justice; and special meetings of the North Carolina State Bar may be called, on not less than thirty days' notice, by the council, or on the call, addressed to the council, of not less than twenty-five percent of the active members of the North Carolina State Bar; but at special meetings no subjects shall be dealt with other than those specified in the notice. Notice of all meetings, whether annual or special, may be given by publication in such newspapers of general circulation as the council may select, or, in the discretion of the council, by mailing notice to the secretary of the several district bars or to the individual active members of the North Carolina State Bar. The North Carolina State Bar shall not take any action in respect of any decision of the council or any committee thereof relating to admission, exclusion, discipline or punishment of any person or other action, save after notice in writing of the action of the council or committee proposed to be directed or overruled, which notice shall be given to the secretary-treasurer thirty days before the meeting, who shall give, by mail, at least fifteen days' notice to the members of the North Carolina State Bar, and unless at the meeting two thirds of the members present and voting shall favor the motion to direct or overrule. There shall be no voting by proxy. (1933, c. 210, s. 16; 1969, c. 104.)

Editor's Note. — The 1969 amendment eliminated from the last sentence a provision that ten percent of the active members of the Bar should constitute a quorum at any annual or special meeting.

§ 84-34. Membership fees and list of members.—Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, beginning with the year 1972, pay to the secretary-treasurer an annual membership fee of thirty dollars ($30.00), and every member shall notify the secretary-treasurer of his correct post-office address. All dues for prior years shall be as were set forth in the General Statutes then in effect. The said membership fee shall be regarded as a service charge for the maintenance of the several services prescribed in this Article, and shall be in addition to all fees now required in connection with admissions to practice, and in addition to all license taxes now or hereafter required by law. The said fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of July of the second calendar year (a "calendar year" for the purposes of this Article being treated as the period from January first to December thirty-first) following that in which he shall have been licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The said fees shall be disbursed by the secretary-treasurer on the order of the council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the council, publish an account of the financial transaction of the council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and post-office addresses forwarded to him and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who shall be in arrears in the payment of membership fees for one or more calendar years shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein said member or members reside, and the court shall thereupon take such action as is necessary and proper. The names and addresses of such attorneys so certified shall be kept avail-

able to the public. The Commissioner of Revenue is hereby directed to supply the secretary-treasurer, from his record of license tax payments, with any information for which the secretary-treasurer may call in order to enable him to comply with this requirement.

The said list submitted to several clerks of the superior court shall also be submitted to the council of the North Carolina State Bar at its October meeting of each year and it shall take such action thereon as is necessary and proper. (1933, c. 210, s. 17; 1939, c. 21, ss. 2, 3; 1953, c. 1310, s. 5; 1955, c. 651, s. 4; 1961, c. 760; 1971, c. 18.)

Editor's Note.—

The 1971 amendment rewrote the first sentence so as to increase the membership provisions as to fees for prior years. The amendment also added the second sentence.

Chapter 85A.

Bail Bondsmen and Runners.

§ 85A-1. Definitions.

Editor's Note.— For comment on bail in North Carolina, see 5 Wake Forest Intra. L. Rev. 300 (1969).

§ 85A-4. Qualifications of sureties on bail.—Each and every surety for the release of a person on bail shall be qualified as:

(1) An insurer and represented by a surety bondsman or bondsmen; or

(2) A professional bondsman properly qualified and approved by the Commissioner; or

(3) A natural person who has reached the age of 18 years, a citizen of the United States and a bona fide resident of North Carolina for a period of one year immediately last past and who holds record title to property in North Carolina acceptable to the proper authority approving the bail bond. (1963, c. 1225, s. 4; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "21" in subdivision (3).

§ 85A-11. Contents of application for bail bondsman's license.—The application for license in addition to the matters set out in G.S. 85A-9, to serve as a bail bondsman must affirmatively show:

Applicant is a natural person who has reached the age of 18 years; is a citizen of the United States, and has been a bona fide resident of the State for one year last past, will actively engage in the bail bond business, and has knowledge, experience or instruction in the bail bond business, or has held a valid all lines fire and casualty agent's license for one year within the last five years; or has been employed by a company engaged in writing bail bonds in which field he has actively engaged for at least one year of the last five years; or is actively engaged in bail bond business at the time this Chapter is passed. (1963, c. 1225, s. 11; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "21" in the second paragraph.

§ 85A-34. Counties subject to Chapter.—This Chapter shall apply to the following counties: Alamance, Beaufort, Bladen, Buncombe, Caldwell, Cleveland, Gaston, Greene, Hyde, Iredell, Jackson, Johnston, Lenoir, McDowell, Madison, Mecklenburg, Person, Richmond, Rutherford, Transylvania, Yadkin and Yancey. (1963, c. 1225, s. 34; 1965, c. 1195; 1967, cc. 384, 433; 1971, cc. 248, 303, 316, 491.)

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.

The first 1971 amendment, effective July 1, 1971, added Alamance, the second 1971 amendment, effective July 1, 1971, added Gaston, the third 1971 amendment, effective Sept. 1, 1971, added Johnston, and the fourth 1971 amendment, effective July 1, 1971, added Bladen to 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	$10.00
For certificate of registration as an apprentice barber	10.00
For a barbershop permit	10.00
For examination to become a registered barber	20.00
For examination to become a registered apprentice	20.00
For restoration of an expired certificate of a registered apprentice barber or a registered barber	20.00
For restoration of an expired barbershop permit	20.00
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	50.00

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 G.S. 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 fifty dollars ($50.00). 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; 1971, c. 826, ss. 1, 2.)

Editor's Note.—

The 1965 amendment, effective June 30, 1965, rewrote this section.

The 1971 amendment increased certain fees charged under the first paragraph of this section and substituted "fifty dollars ($50.00)" for "twenty-five dollars ($25.00)" near the end of the second paragraph.

Session Laws 1971, c. 826, s. 3, provides: "This act shall become effective upon ratification but shall apply to licenses and shop permits which become effective on or after June 30, 1972."

§ 86-20. Disqualifications for certificate.

Cited in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969).

§ **86-22. Misdemeanors.**—Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), or 30 days in jail or both:

(1) The violation of any of the provisions of G.S. 86-1.

(2) Permitting any person in one's employ, supervision or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.

(3) Permitting any person in one's employ, supervision or control, to practice as a barber unless that person has a certificate as a registered barber.

(4) Obtaining or attempting to obtain a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.

(5) Practicing or attempting to practice by fraudulent misrepresentations.

(6) The willful failure to display a certificate of registration as required by G.S. 86-18.

(7) The violation of the reasonable rules and regulations adopted by the State Board of Barber Examiners for the sanitary management of barbershops and barber schools.

(8) The violation of any of the provisions of G.S. 86-5.

(9) The refusal of any owner or manager to permit any member of the Board, its agents, or assistants to enter upon and inspect any barbershop, or barber school, or any other place where barber service is rendered, at any time during business hours.

(10) The violation of any one or a combination of the sanitary rules and regulations.

(11) Practicing or attempting to practice barbering during the period of suspension or revocation of any certificate of registration granted under this Chapter. Each day's operation during such period of suspension or revocation shall be deemed a separate offense, and, upon conviction thereof, shall be punished as prescribed in this section.

(12) The violation of G.S. 86-15 as appearing in the recompiled volume. (1929, c. 119, s. 21; 1933, c. 95, s. 1; 1937, c. 138, s. 6; 1941, c. 375, ss. 9, 10; 1951, c. 821, s. 2; 1971, c. 819.)

Editor's Note.—

The 1971 amendment substituted "twenty-five dollars ($25.00)" for "ten dollars" and "one hundred dollars ($100.00)" for "fifty ($50.00) dollars" in the introductory paragraph.

Chapter 87.
Contractors.

ARTICLE 1.

General Contractors.

§ 87-1. "General contractor" defined; exemptions.—For the purpose of this Article, a "general contractor" is defined as one who for a fixed price, commission, fee or wage, undertakes to bid upon or to construct any building, highway, sewer main, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars ($30,000.00) or more and anyone who shall bid upon or engage in constructing any undertakings or improvements above mentioned in the State of North Carolina costing thirty thousand dollars ($30,000.00) or more shall be deemed and held to have engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power plant equipment, radial brick chimneys, and monuments. (1925, c. 318, s. 1; 1931, c. 62, s. 1; 1937, c. 429, s. 1; 1949, c. 936; 1953, c. 810; 1971, c. 246, s. 1.)

Editor's Note.—

The 1971 amendment substituted "thirty thousand dollars ($30,000.00)" for "twenty thousand dollars ($20,000.00)" twice in the first paragraph.

The purpose of this article is to protect the public from incompetent builders. Bryan Builders Supply v. Midyette, 274 N.C. 264, 162 S.E.2d 507 (1968); Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969); Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970); Holland v. Walden, 11 N.C. App. 281, 181 S.E.2d 197 (1971).

The applicability of this article is determined by the cost of the undertaking and not by the amount of any separate progress payment required by the contract. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

The importance of deterring unlicensed persons from engaging in the construction business outweighs any harshness between the parties and precludes consideration for

unjust enrichment. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

Customer May Not Waive Requirements of Statute.—The general contractors licensing statute does not authorize a person with whom an unlicensed contractor deals to waive the requirements of the statute, nor does it grant the unlicensed contractor immunity merely because he advises the customer that he is acting in violation of the statute. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

"Improvement". — The term "improvement" as used in this section connotes the performance of construction work and presupposes the prior existence of some structure to be improved. Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

As used with reference to land, the word "improvement" in this section presupposes the prior existence of the land itself. Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

"Building" and "Structure".—The words "building" and "structure" in this section are synonymous. They agree in meaning but differ slightly in application. "Structure" retains more frequently than the other the sense of something constructed, often in a particular way. Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

The words "building" and "structure" are strictly construed in context with the remainder of this section, and they do not embrace parts or segments of a building or structure. They exclude any meaning the legislature could have conveyed simply by adding the words "or any part thereof" following the word "structure." Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

A building is defined as "an edifice . . . a structure"; and a structure is defined as "that which is built or constructed; an edifice or building of any kind." Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

Advising Customer of Violation Does Not Immunize Contractor.—The general contractors licensing statute does not grant the unlicensed contractor immunity merely because he advises the customer that he is acting in violation of the statute. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

Unlicensed Person May Not Recover for Owner's Breach of Contract.—When, in disregard of this article, an unlicensed person contracts with an owner to erect a building costing more than the minimum sum specified in this section, he may not recover for the owner's breach of that contract. Bryan Builders Supply v. Midvette, 274 N.C. 264, 162 S.E.2d 507 (1968); Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

When, in disregard of this protective statute, an unlicensed person contracts with an owner to erect a building costing more than the minimum sum specified in the statute, he may not recover for the owner's breach of that contract. This is true even though the statute does not expressly forbid such suits. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

When an unlicensed person contracts with an owner to erect a building costing more than the minimum sum specified in this section, he may not recover for the owner's breach of the contract, nor may he recover the value of the work and services furnished under the contract on the theory of quantum meruit or unjust enrichment. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

To deny any unlicensed person the right to recover damages for breach of the contract, which it was unlawful for him to make, but to allow him to recover the value of work and services furnished under that contract would defeat the legislative purpose of protecting the public from incompetent contractors. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

By contracting with defendants and undertaking to construct a house for them at the agreed price of $67,500.00, plaintiff became a "general contractor" and engaged in the business of general contracting in this State within the definition contained in this section, thereby becoming subject to the licensing provisions of § 87-10 and unless substantially complying with those provisions, may not recover against defendants either on contract or upon quantum meruit. Holland v. Walden, 11 N.C. App. 281, 181 S.E.2d 197 (1971).

Subcontractors Not Required to Be Licensed.—The legislature, by the use of the words "building," "improvement," and "structure," in this section, did not intend to require subcontractors who undertake to furnish labor and materials in excess of $20,000.00 (now $30,000.00) to construct integral parts of a large building complex to be licensed as general contractors. Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

It would serve no public policy intended by this Chapter to hold a subcontractor to be a general contractor within the purview

of this section. If the legislature had intended to include subcontractors in the class required to be licensed, it would have specifically so provided. Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

Licensing statutes have no application to rights and liabilities of contractors and subcontractors inter se where the public interest is not involved. Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

General Contractor's License Required to Install Roofing in Certain Circumstances.—See opinion of Attorney General to Mr. James M. Wells, Jr., State Licensing Board for Contractors, 41 N.C.A.G. 414 (1971).

§ 87-8. Records; roster of licensed contractors.

One of the obvious purposes of requiring annual renewal of licenses is to enable the Licensing Board to maintain and publish the roster of currently licensed contractors as required by this section. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

§ 87-9. Compliance with Federal Highway Act, etc.; contracts financed by federal road funds.—Nothing in this Article shall operate to prevent the State Highway Commission from complying with any act of Congress and any rules and regulations promulgated pursuant thereto for carrying out the provisions of the Federal Highway Act, or shall apply to any person, firm or corporation proposing to submit a bid or enter into contract for any work to be financed in whole or in part with federal aid road funds in such manner as will conflict with any act of Congress or any such rules and regulations promulgated pursuant thereto. (1939, c. 230; 1971, c. 246, s. 2.)

Editor's Note.—

The 1971 amendment substituted "pursuant thereto" for "by the United States Secretary of Agriculture" near the middle of this section and substituted "promulgated pursuant thereto" for "of the United States Secretary of Agriculture" at the end of the section.

§ 87-10. Application for license; examination; certificate; renewal.—Anyone hereafter desiring to be licensed as a general contractor in this State shall make and file with the Board, thirty days prior to any regular or special meeting thereof, a written application on such form as may then be by the Board prescribed for examination by the Board, which application shall be accompanied by the sum of eighty dollars ($80.00) if the application is for an unlimited license, or sixty dollars ($60.00) if the application is for an intermediate license, or forty dollars ($40.00) if the application is for a limited license; the holder of an unlimited license shall be entitled to engage in the business of general contracting in North Carolina unlimited as to the value of any single project, the holder of an intermediate license shall be entitled to engage in the practice of general contracting in North Carolina but shall not be entitled to engage therein with respect to any single project of a value in excess of three hundred thousand dollars ($300,000.00), the holder of a limited license shall be entitled to engage in the practice of general contracting in North Carolina but the holder shall not be entitled to engage therein with respect to any single project of a value in excess of seventy-five thousand dollars ($75,000.00) and the license certificate shall be classified as hereinafter set forth. Before being entitled to an examination an applicant must show to the satisfaction of the Board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability and integrity, and that the applicant has not committed or done any act, which, if committed or done by any licensed contractor would be grounds under the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this State or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never

been convicted of a felony: Provided, no applicant shall be refused the right to an examination, except in accordance with the provisions of Chapter 150 of the General Statutes.

The Board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction and liens. If the results of the examination of applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in said certificate, which may be limited into four classifications as the common use of the terms are known—that is,

(1) Building contractor;
(2) Highway contractor;
(3) Public utilities contractor; and
(4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of 30 days thereafter, and then be canceled, but the applicant shall then be entitled to a reexamination, all pursuant to the rules to be promulgated by the Board: Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this Article.

Anyone failing to pass this examination may be reexamined at any regular meeting of the Board without additional fee. Certificate of license shall expire on the thirty-first day of December following the issuance or renewal and shall become invalid on that day unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without reexamination, by the payment of a fee to the secretary of the Board of sixty dollars ($60.00) for unlimited license, forty dollars ($40.00) for intermediate license and twenty dollars ($20.00) for limited license. (1925, c. 318, s. 9; 1931, c. 62, s. 2; 1937, c. 328; c. 429, s. 3; 1941, c. 257, s. 1; 1953, c. 805, s. 2; 1953, c. 1041, s. 3; 1971, c. 246, s. 3.)

Editor's Note.—

The 1971 amendment substituted "thirty-first day of December" for "first day of December" in the second sentence of the last paragraph and deleted the proviso relating to contracts of the State Highway Commission following "limited license" at the end of that paragraph.

One of the obvious purposes of requiring annual renewal of licenses is to enable the Licensing Board to maintain and publish the roster of currently licensed contractors as required by § 87-8. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

Annual license renewal should be considered an important, and not merely a perfunctory, requirement in order to accom-

plish the protective public purpose of the statute. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

Nature and Purpose of Annual Renewal Fees. — The annual renewal fees required by this section are in no way related to the license taxes required to be paid by contractors by the North Carolina Revenue Act. The renewal fees required by this section are not part of the State's revenues, but provide the funds by which the North Carolina State Licensing Board for Contractors is enabled to carry out the public purposes for which it was created. Therefore the payment of these fees bears a direct and substantial relationship to the accomplishment of the public purposes of § 87-1 et seq. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

Substantial Compliance.—Where a contractor does not have a valid license at the time of entering into a contract, he has not substantially complied with the licensing statute. Ar-Co Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

Having at one time held a valid contractor's license plaintiff should not be held to have substantially complied with the requirements of this article. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

By contracting with defendants and undertaking to construct a house for them at the agreed price of $67,500.00, plaintiff become a "general contractor" and engaged in the business of general contracting in this State within the definition contained in § 87-1, thereby becoming subject to the licensing provisions of this section and, unless substantially complying with these provisions, may not recover against defendants either on contract or upon quantum meruit. Holland v. Walden, 11 N.C. App. 281, 181 S.E.2d 197 (1971).

Unlicensed Party May Not Maintain Action.—Where the party who acted as a general contractor was unlicensed not only at the time the contract was entered into but at all times thereafter while undertaking to perform under it, the unlicensed contractor could not maintain his actions against the defendant. Holland v. Walden, 11 N.C. App. 281, 181 S.E.2d 197 (1971).

With Certain Exception. — Where the plaintiff held a valid license for 88 percent of the construction time, during which the major portion of the construction work was performed, and had already been paid for the work performed while unlicensed, she could maintain her action on the contract. Holland v. Walden, 11 N.C. App. 281, 181 S.E.2d 197 (1971).

Plaintiff may recover at least upon a quantum meruit for work done on the contract up to the time that changes, made at the request of defendants, resulted in the project having a value in excess of the limitations of plaintiff's license. Holland v. Walden, 11 N.C. App. 281, 181 S.E.2d 197 (1971).

§ 87-13. Unauthorized practice of contracting; impersonating contractor; false certificate; giving false evidence to Board; penalties.

This section makes it a misdemeanor to use an expired license. Ar-Con Constr. Co. v. Anderson, 5 N.C. App. 12, 168 S.E.2d 18 (1969).

Quoted in Vogel v. Reed Supply Co., 277 N.C. 119, 177 S.E.2d 273 (1970).

§ **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 county 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 thirty thousand dollars ($30,000.00) 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; 1969, c. 1063, s. 6; 1971, c. 246, s. 4.)

Editor's Note.— The 1969 amendment substituted "county" for "village" near the beginning of the section. The 1971 amendment substituted "thirty thousand dollars ($30,000.00)" for "twenty thousand dollars ($20,000.00)."

§ 87-15.1. Reciprocity of licensing.—To the extent that other states which provide for the licensing of general contractors provide for similar action, the Board in its discretion may grant licenses of the same or equivalent classification to general contractors licensed by other states, without written examination upon satisfactory proof furnished to the Board that the qualifications of such applicants are equal to the qualifications of holders of similar licenses in North Carolina and upon payment of the required fee. (1971, c. 246, s. 5.)

ARTICLE 2.

Plumbing and Heating Contractors.

§ 87-16. Board of Examiners; appointment; term of office.—For the purpose of carrying out the provisions of this Article there is hereby created a State Board of Examiners of Plumbing and Heating Contractors, consisting of seven members to be appointed by the Governor within 60 days after February 27, 1931. The said Board shall consist of one member from the School of Engineering of North Carolina State University, one member from the State Board of Health, one member to be a plumbing inspector from some city of the State, one licensed master plumber and one heating contractor, one member from the school of Public Health of the University of North Carolina at Chapel Hill, and one member to be a licensed air-conditioning contractor. The term of office of said members shall be so designated by the Governor that the term of one member shall expire each year. Thereafter in each year the Governor shall in like manner appoint one person to fill the vacancy on the Board thus created. Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term. Whenever the word "Board" is used in this Article, it shall be deemed and held to refer to the State Board of Examiners of Plumbing and Heating Contractors. (1931, c. 52, s. 1; 1939, c. 224, s. 1; 1971, c. 768, s. 1.)

Editor's Note.— The 1971 amendment substituted in the second sentence "the School of Engineering of North Carolina State University" for "the Engineering School of the Greater University of North Carolina" and "the School of Public Health of the University of North Carolina at Chapel Hill" for "the division of public health of the Greater University of North Carolina."

§ 87-17. Removal, qualifications and compensation of members; allowance for expenses.—The Governor may remove any member of the Board for misconduct, incompetency or neglect of duty. Each member of the Board shall be a citizen of the United States and a resident of this State at the time of his appointment. Each member of the Board shall receive for attending sessions of the Board or of its committees the amount of per diem provided by G.S. 138-5, and for the time spent in necessary traveling in carrying out the provisions of this article, and in addition to the per diem compensation, each member shall be reimbursed by the Board from funds in its hands for necessary traveling expenses and for such expenses incurred in carrying out the provisions hereof as shall be approved by a majority of the members of the Board. (1931, c. 52, s. 2; 1969, c. 445, s. 8.)

Editor's Note. — The 1969 amendment deleted "ten dollars per day" following "receive" in the third sentence and inserted "the amount of per diem provided by G.S. 138-5" in that sentence.

§ 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 ex-

amination 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 reexamined until the next regular examination.

(c) To Whom Article Applies.—The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of plumbing or heating contracting, or any combination thereof as defined in this Article. 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.—Any resident of North Carolina who was engaged in business as defined in this Article in any city, town or other area in which General Statutes 87, Article 2 did not previously apply, shall receive license without examination upon submission of an application on forms provided by the Board, together with reasonable proof that he was engaged in business as defined and upon payment of the annual license fee; provided, the completed application is submitted to the Board on or before December 31, 1972.

(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) Repealed by Session Laws 1971, c. 768, s. 4. (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; 1971, c. 768, ss. 2-4.)

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 former subsection (f).

The 1971 amendment substituted "provisions" for "requirements" and "to all persons" for "only to persons" near the beginning of the first sentence of subsection (c) and "as defined in this Article" for "in cities or towns having a population of more than thirty five hundred in accordance with the last official United States census" at the end of that sentence. In subsection (d) the amendment substituted "any resident of North Carolina who was" for "persons who were" at the beginning of the subsection and rewrote the last part of the subsection. The amendment also deleted subsection (f), relating to license without examination of persons engaged in business of heating group number three.

Licensing under the Grandfather Clause. —See opinion of Attorney General to Mr. F.D. Bates, State Plumbing and Heating Board, 41 N.C.A.G. 298 (1971).

§ 87-22. License fee based on population; expiration and renewal; penalty.—All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns of 10,000 inhabitants or more shall pay an annual license fee of fifty dollars ($50.00), and in cities or towns of less than 10,000 inhabitants an annual license fee of twenty-five dollars ($25.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. It shall be the duty of the secretary and treasurer to cause to be mailed to every licensee registered hereunder notice to his last known address of the amount of fee required for renewal of license, such notice to be mailed at least one month in advance of the expiration of said license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay

the fee therefor during the month of January in each year, the Board shall increase said license fee ten per centum (10%) for each month or fraction of a month that payment is delayed; provided that the penalty for nonpayment shall not exceed the amount of the annual fee, and provided, further, that no penalty will be imposed if one half of the annual license fee is paid in January and the remaining one half in June of each year. (1931, c. 52, s. 7; 1939, c. 224, s. 4; 1971, c. 768, s. 5.)

Editor's Note.— The 1971 amendment deleted "more than thirty-five hundred and" following "or towns of" near the end of the first sentence.

§ 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 4.

Electrical Contractors.

§ 87-39. Board of Examiners; appointment; terms; chairman; meetings; quorum; principal office; compensation; oath.—The State Board of Examiners of Electrical Contractors shall continue as the State agency responsible for the licensing of persons engaging in electrical contracting within this State, and shall from July 1, 1969, consist of a representative from the North Carolina Department of Insurance to be designated by the Commissioner of Insurance, the secretary or other representative of the North Carolina Association of Electrical Contractors to be designated by the governing body of that organization, and three other members to be appointed by the Governor as follows: One from the faculty of the Greater University of North Carolina who shall be a person who teaches or does research in the field of electrical engineering; one person who is serving as chief electrical inspector of a municipality or county in the State of North Carolina; and one person who holds a license classification under G.S. 87-43.3, and who represents a sole proprietorship, partnership, or corporation located in the State of North Carolina which is actively engaged in the business of electrical contracting. The terms of the present appointed members of the Board shall be continued and shall end with the expiration dates established with their said appointments. All members shall serve for a term of three years and until their respective successors are appointed and qualified. Any vacancy occurring in an appointed membership of the Board shall be filled by appointment of the Governor for the unexpired term.

The Board shall hold regular meetings quarterly and may hold meetings on call of the chairman. The chairman shall be required to call a special meeting upon written request by two members of the Board. The Board shall, at the first meeting following appointment of the new member in each year, meet and elect from its membership a chairman and vice-chairman, each to serve for one year. Three members of the Board shall constitute a quorum. The principal office of the Board shall be at such place as shall be designated by a majority of the members thereof. Each member of the Board shall receive as compensation for his services the sum of ten dollars ($10.00) for each day actually devoted to the performance of his duties under this article, and in addition shall be reimbursed for all necessary expenses incurred in the performance of his duties under this article. Before entering upon the performance of his duties hereunder, each member of the Board shall take and file with the Secretary of State an oath in writing to properly perform the duties of his office as a member of said Board, and to uphold the Constitu-

tion of North Carolina and the Constitution of the United States. (1937, c. 87, s. 1; 1969, c. 669, s. 1.)

Revision of Article.—Session Laws 1969, c. 669, revised and rewrote this article, which formerly consisted of thirteen sections, numbered §§ 87-39 to 87-51. No attempt has been made to point out the changes affected by the 1969 act, but, where appropriate, the historical citations to the former sections have been added to corresponding sections of the revised article. Session Laws 1969, c. 669, s. 3, provides: "This act shall be in full force and effect from and after July 1, 1969, except that the provisions regarding classifications as defined in G.S. 87-43.3 shall not be effective until July 1, 1970."

§ **87-40. Secretary-treasurer.**—The State Board of Examiners of Electrical Contractors shall at its first meeting following appointment of the new member in each year appoint a secretary-treasurer for a period of one year. The secretary-treasurer need not be a member of the Board, and the Board is authorized to employ a full-time secretary-treasurer and such other assistants and to make such other expenditures as may be necessary to the proper performance of the duties of the Board under this article. The compensation and the duties of the secretary-treasurer shall be fixed by the Board, and the secretary-treasurer shall give bond in such sum and form as the Board shall require for the faithful performance of his duties. The secretary-treasurer shall keep a record of the proceedings of said Board and shall receive and account for all monies derived from the operations of the Board under this article. (1937, c. 87, ss. 2, 3; 1969, c. 669, s. 1.)

§ **87-41. Seal of Board.**—The Board shall adopt a seal for its own use, and the secretary-treasurer shall have charge and custody thereof. The seal shall have inscribed thereon the words "Board of Examiners of Electrical Contractors, State of North Carolina." (1937, c. 87, s. 3; 1969, c. 669, s. 1.)

§ **87-42. Duties and powers of Board.**—In order to protect the life, health and property of the public, the State Board of Examiners of Electrical Contractors shall provide for the examination of all applicants for a license as an electrical contractor. The Board shall receive all applications for licenses to be issued under this article, shall examine all applicants to determine that each shall be qualified and shall also discharge those duties enumerated in G.S. 87-47. Individual applicants must be at least 21 years of age, and shall be required to demonstrate to the satisfaction of the Board evidence of good character and adequate technical and practical knowledge concerning the safe and proper installation of electrical work and equipment. The examination to be given for this purpose shall include, but not be limited to, the appropriate provisions of the National Electrical Code and the North Carolina State Building Code, the analysis of electrical plans and specifications, estimating of electrical installations, and the fundamentals of installation of electrical work and equipment. The Board shall prescribe the standards of knowledge, experience and proficiency to be required of licensees, which may vary for the various classifications of licenses. The Board shall have power to make rules and regulations necessary to the performance of its duties and for the effective implementation of the provisions of this article. The Board shall issue licenses to all applicants meeting the requirements of the Board upon the receipt of the fees herein prescribed. The Board shall keep minutes of all its proceedings, and shall keep an accurate record of receipts and disbursements which shall be audited at the close of each fiscal year by a certified public accountant and filed with the State of North Carolina in accordance with chapter 93B of the General Statutes. (1937, c. 87, s. 4; 1969, c. 669, s. 1.)

§ **87-43. Electrical contracting defined; licenses.**—Electrical contracting shall be defined as engaging or offering to engage in the business of installing, maintaining, altering or repairing any electric work, wiring, devices, appliances or equipment. No person, firm or corporation shall engage, or offer to engage, in the business of electrical contracting within the State of North Carolina without hav-

ing received a license from the State Board of Examiners of Electrical Contractors in compliance with the provisions of this article. In each separate place of business operated by an electrical contractor at least one person must be regularly on active duty who has passed the examination required by this article and who has the specific duty and authority to supervise and direct all electrical wiring or electrical installation work done or made by such separate place of business. Every person, firm or corporation engaging in the business of electrical contracting shall display a current certificate of license in his principal place of business and in each branch place of business which he operates. Licenses issued hereunder shall be signed by the chairman and the secretary-treasurer of the Board, under the seal of the Board. A registry of all licenses issued to electrical contractors shall be kept by the secretary-treasurer of the Board, and said registry shall be open for public inspection during ordinary business hours. (1937, c. 87, s. 5; 1951, c. 650, ss. 1-2½; 1953, c. 595; 1961, c. 1165; 1969, c. 669, s. 1.)

§ **87-43.1. Exceptions.**—The provisions of this article shall not apply:

(1) To the installation, construction or maintenance of facilities for providing electric service to the public ahead of the point of delivery of electric service to the customer;

(2) To the installation, construction, maintenance, or repair of telephone, telegraph, or signal systems, by public utilities, or their corporate affiliates, when said work pertains to the services furnished by said public utilities;

(3) To any mechanic employed by a licensee of this Board;

(4) To the installation, construction or maintenance of electrical equipment and wiring for temporary use by contractors in connection with the work of construction;

(5) To the installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by persons, firms or corporations, upon their own property, who regularly employ one or more electricians or mechanics for the purpose of installing, maintaining or repairing of electrical wiring, devices or equipment used for the conducting of the business of said persons, firms or corporations;

(6) To the installation, construction, maintenance or repair of electrical wiring, devices, appliances or equipment by State institutions and private educational institutions which maintain a private electrical department;

(7) To the replacement of lamps and fuses and to the installation and servicing of appliances and equipment connected by means of attachment plug-in devices to suitable receptacles which have been permanently installed. (1937, c. 87, s. 5; 1951, c. 650, ss. 1-2½; 1953, c. 595; 1961, c. 1165; 1969, c. 669, s. 1.)

§ **87-43.2. Corporate or partnership practice of electrical contracting.**—A corporation or partnership shall be eligible to be licensed as an electrical contractor, and to have such license renewed, provided:

(1) At least one person who has qualified under the provisions of this article shall be regularly employed by the applicant at each separate place of business, such person to have the specific duty and authority to provide direct supervision of all installation, maintenance, alteration or repair of any electrical wiring, devices, appliances or equipment done in the name of the licensee;

(2) An application is filed with the Board which contains a statement of ownership, states the names and official positions of employees currently qualified under this article, and provides such other information as the Board may reasonably require;

(3) The applicant, through an authorized officer or owner, shall agree in

writing that the corporation or partnership will report to the Board within five days any additions to or loss of the employment of qualified individuals as described in subdivisions (1) and (2) above;

(4) A license issued to a corporation or partnership shall indicate the names and classifications of qualified individuals as described in subdivisions (1) and (2) above;

(5) A license issued to a corporation or partnership shall be canceled if at any time no person who has qualified under the provisions of this article shall be regularly employed by the corporation or partnership as provided by subdivision (1) above; provided, that work begun prior to such cancellation may be completed under such conditions as the Board shall direct; provided further that no work for which a license is required under this article shall be bid for, contracted for or initiated subsequent to such cancellation until said license is reinstated by the Board. (1937, c. 87, s. 5; 1951, c. 650, ss. 1-2½; 1953, c. 595; 1961, c. 1165; 1969, c. 669, s. 1.)

§ 87-43.3. Classification of licenses.—An electrical contractor's license shall be issued in one of three classifications: *Limited,* under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of five thousand dollars ($5,000.00) and on which the equipment or installation in the contract is rated at not more than 600 volts; *Intermediate,* under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of fifty thousand dollars ($50,000.00); and *Unlimited,* under which a licensee shall be permitted to engage in any electrical contracting project regardless of value. The Board may establish appropriate standards for each classification, such standards not to be inconsistent with the provisions of G.S. 87-42. (1969, c. 669, s. 1.)

Editor's Note. — Session Laws 1969, c. 669, s. 3, provides: "This act shall be in full force and effect from and after July 1, 1969, except that the provisions regarding classifications as defined in G.S. 87-43.3 shall not be effective until July 1, 1970."

§ 87-44. License fees; term; revocation. — The Board shall collect a fee from each applicant before granting or renewing a license under the provisions of this article; the annual license fee for the limited classification shall not be in excess of twenty dollars ($20.00) for each principal and each branch place of business; the annual license fee for the intermediate classification shall not be in excess of fifty dollars ($50.00) for each principal and each branch place of business; the annual license fee for the unlimited classification shall not be in excess of one hundred dollars ($100.00) for each principal and each branch place of business.

Each license issued under the provisions of this article shall expire on June 30 following the date of its issuance, and shall be renewed by the Board upon receipt and evaluation of a renewal application from a licensee and the payment of the required fee. The application shall be upon a form provided by the Board and shall furnish such information as the Board may require. Renewal applications and fees shall be due thirty days prior to the license expiration date; applications received after this time may, in the discretion of the Board, be subject to a penalty not exceeding ten percent (10%) of the license fee. No license issued in accordance with the provisions of this article shall be assignable or transferable. (1937, c. 87, ss. 6, 7, 10; 1953, c. 1041, s. 7; 1969, c. 669, s. 1.)

§ 87-45. Funds.—The fees collected for examinations and licenses under this article shall be used for the expenses of the State Board of Examiners of Electrical Contractors in carrying out the provisions of this article. No expenses of the Board or compensation of any member or employee of the Board shall be payable out of the treasury of the State of North Carolina; and neither the Board nor any member 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. Any funds remaining in the hands of the secretary-treasurer to the credit of the Board after all expenses of the Board for the current fiscal year have been fully provided for shall be paid over to the North Carolina Engineering Foundation, Inc., for the benefit of the electrical engineering department of the Greater University of North Carolina. Provided, however, the Board shall have the right to maintain an amount, the cumulative total of which shall not exceed twenty percent (20%) of gross receipts for the previous fiscal year of its operation as a maximum contingency or emergency fund. (1937, c. 87, ss. 3, 7; 1969, c. 669, s. 1.)

§ 87-46. Responsibility of licensee; nonliability of Board.—Nothing in this article shall relieve the holder or holders of licenses issued under the provisions hereof from complying with the building or electrical codes or statutes or ordinances of the State of North Carolina, or of any county or municipality thereof now in force or hereafter enacted. Nothing in this article shall be construed as relieving the holder of any license issued hereunder from responsibility or liability for negligent acts on the part of such holder in connection with electrical contracting work; nor shall the State Board of Examiners of Electrical Contractors be accountable in damages, or otherwise for the negligent act or acts of any holder of such license. (1937, c. 87, s. 12; 1969, c. 669, s. 1.)

§ 87-47. Jurisdiction of Board over licensees.—In the interest of protecting the public, the Board shall have jurisdiction to hear and determine on its own motion or upon written complaint, all complaints, allegations of charges of malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence or gross misconduct in the practice of electrical contracting, or fraud or deceit in obtaining a license under this article, made against any licensee under this article; and the Board may administer to licensees any one or more of the following penalties: (i) reprimand; (ii) suspension from practice for a period not to exceed twelve months; (iii) revocation of license; and (iv) probationary revocation of license upon conditions set by the Board as the case shall in their judgment warrant with revocation of license upon failure to comply.

The Board shall, in accordance with chapter 150 of the General Statutes, formulate rules of procedure governing the hearings of charges against licensees. Any person may prefer charges against any licensee, and such charges must be sworn to by the complainant and submitted in writing to the Board. Charges shall be heard and determined by the Board, and may be dismissed without notice to the accused licensee if unfounded or trivial. In conducting hearings of charges against licensees, the Board may remove the same to any county in which the offense, or any part thereof, was committed if in the opinion of the Board the ends of justice or the convenience of witnesses require such removal.

The Board may reissue a license to any person, firm or corporation after having revoked such license, provided; that one year has elapsed from revocation until reissuance, and the vote of the Board is by a majority of its members.

The Board shall immediately notify the Secretary of State and the electrical inspectors within the licensee's county of residence upon the revocation of a license or the reissuance of a license which had been revoked. (1969, c. 669, s. 1.)

§ 87-48. Penalty for violation of article; powers of Board to enjoin violation.—(a) Any person, firm or corporation who shall violate any of the provisions of this article, or who shall engage or undertake to engage in the business of installing, maintaining, altering or repairing within the State of North Carolina any electric wiring, devices, appliances or equipment without first having obtained a license under the provisions of this article, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars ($25.00) or more than fifty dollars ($50.00) for each offense. Conviction of a violation of this article on the part of a holder of a license issued

hereunder shall automatically have the effect of suspending such license until such time as it shall have been reinstated by the State Board of Examiners of Electrical Contractors.

(b) Whenever it shall appear to the State Board of Examiners of Electrical Contractors that any person, firm or corporation has violated, threatens to violate, or is violating any provisions of this article, the Board may apply to the courts of the State for a restraining order and injunction to restrain such practices. If upon such application the court finds that any provision of this article is being violated, or a violation thereof is threatened, the court shall issue an order restraining and enjoining such violations, and such relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this article. (1937, c. 87, s. 13; 1969, c. 669, s. 1.)

§ 87-49. No examination required of licensed contractors. — Any person, firm or corporation licensed in this State as a Class II electrical contractor on the effective date of this article shall be entitled to be licensed, without examination, in the limited classification upon payment of the required fee and may be licensed in the intermediate or in the unlimited classification without written examination upon satisfactory proof to the Board that such applicant is in fact qualified for such classification. Any person, firm or corporation licensed in this State as a Class I electrical contractor on the effective date of this article shall be entitled to be licensed without examination in the limited, intermediate or unlimited classification upon payment of the required fee. Provided, that any person who has been once duly licensed by the Board, whose license has expired solely because of failure to apply for renewal, may apply and have a license issued under the provisions of this section if within a period of twelve months preceding such issuance the applicant shall have been primarily actively engaged as an electrical contractor or in an occupation which in the judgment of the Board is similar or equivalent to that of an electrical contractor. (1969, c. 669, s. 1.)

Editor's Note. — Session Laws 1969, c. 669, s. 3, provides: "This act shall be in full force and effect from and after July 1, 1969, except that the provisions regarding classifications as defined in G.S. 87-43.3 shall not be effective until July 1, 1970."

§ 87-50. License to nonresidents; reciprocity. — To the extent that other states which provide for the licensing of electrical contractors provide for similar action, the Board may grant licenses of the same or equivalent classification to electrical contractors licensed by other states without written examination upon satisfactory proof furnished to the Board that the qualifications of such applicants are equal to the qualifications of holders of similar licenses in North Carolina and upon payment of the required fee. (1969, c. 669, s. 1.)

§ 87-51. Severability of provisions.—If any provision of this article or the application thereof to any person or circumstances is for any reason held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable. (1969, c. 669, s. 1.)

ARTICLE 5.

Refrigeration Contractors.

§ 87-53. Removal, qualifications and compensation of members; allowance for expenses.— The Governor may remove any member of the Board for misconduct, incompetency or neglect of duty. Each member of the Board shall be a citizen of the United States and a resident of this State at the time of his appointment. Each member of the Board shall receive the amount of per diem provided by G.S. 138-5 for attending sessions of the Board or of its committees, and for the time spent in necessary traveling in carrying out the pro-

visions of this article, and in addition to the per diem compensation, each member shall be reimbursed by the Board from funds in its hands for necessary traveling expenses and for such expenses incurred in carrying out the provisions hereof, as shall be approved by a majority of the members of the Board. (1955, c. 912, s. 2; 1969, c. 445, s. 9.)

Editor's Note. — The 1969 amendment substituted "the amount of per diem provided by G.S. 138-5" for "fifteen dollars ($15.00) per day" in the third sentence.

§ 87-64. Examination and license fees; annual renewal.—Each applicant for a license by examination shall pay to the secretary and treasurer of the Board an examination fee in an amount not to exceed the sum of thirty dollars ($30.00) before being admitted to the examination. In the event said applicant shall fail to pass the examination, the examination fee so paid shall be refunded by the Board.

The license of every person licensed under the provisions of this statute shall be annually renewed. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee of thirty dollars ($30.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows his license to lapse may be reinstated by the Board upon payment of a fee of thirty-five dollars ($35.00); provided any person who fails to renew his license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business. (1955, c. 912, s. 13; 1969, c. 314.)

Editor's Note. — The 1969 amendment substituted "thirty dollars ($30.00)" for "twenty-five dollars ($25.00)" in the first sentence of the first paragraph and in the third sentence of the second paragraph and substituted "thirty-five dollars ($35.00)" for "thirty dollars ($30.00)" in the last sentence of the second paragraph.

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 induvidual 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.)

Editor's Note. — The reference to the Constitution in this section is to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. 1, § 32.

§ **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 88.
Cosmetic Art.

§ 88-11. When apprentice may operate shop.

This chapter does not alter common-law rules governing liability of employer of an apprentice cosmetologist for the consequences of the employee's acts in the course of her employment. Johnson v. Lamb, 273 N.C. 701, 161 S.E.2d 131 (1968).

Liability of Cosmetologist.—Like the physician, or other person undertaking to perform professional services, the cosmetologist is not an insurer against injury from the treatment she undertakes to render, nor is she liable for the consequences of every error of judgment. Johnson v. Lamb, 273 N.C. 701, 161 S.E.2d 131 (1968).

Employer Need Not Personally Direct Each Act of Apprentice.—It was not the intent of this section to impose upon the employer of an apprentice cosmetologist a duty, owed to customers of the establishment, to stand at the side of the apprentice and personally direct each act performed in the rendering of each service to each customer. Johnson v. Lamb, 273 N.C. 701, 161 S.E.2d 131 (1968).

Assignment of Customer to Inexperienced Apprentice.—The proprietor of a beauty salon may not, by the assignment of a customer to an inexperienced apprentice, nothing else appearing, reduce the undertaking of the proprietor to bring to the performance of the service the degree of professional skill and ability ordinarily possessed by those engaged in the trade in the particular locality or area. If, however, the apprentice performing the service possesses such skill, exercises reasonable care in the application of it to the customer's case, and uses her best judgment in the performance of the service, there can be no liability for injury upon either the apprentice or the proprietor of a salon on the basis of negligence in the performance of the service. Johnson v. Lamb, 273 N.C. 701, 161 S.E.2d 131 (1968).

§ 88-14. Office in Raleigh; seal; officers and secretary.—The Board of Cosmetic Art Examiners shall maintain a suitable office in Raleigh, North Carolina, and shall adopt and use a common seal for the authentication of its orders and records. Said Board shall elect its own officers and in addition thereto shall employ an executive secretary, who shall not be a member of the Board. The salary of such executive secretary shall be fixed by the State Personnel Department. The secretary shall keep and preserve all the records of the Board, issue all necessary notices and perform such other duties, clerical and otherwise, as may be imposed upon such secretary by said Board of Cosmetic Art Examiners. The secretary is hereby authorized and empowered to collect in the name and on behalf of said Board the fees prescribed by this Chapter and shall turn over to the State Treasurer all funds collected or received under this Chapter, which fund shall be credited to the Board of Cosmetic Art Examiners, and said funds shall be held and expended under the supervision of the Director of the Budget of the State of North Carolina exclusively for the administration and enforcement of the provisions of this Chapter. The said secretary shall, before entering upon the duties of the office, execute a satisfactory bond with a duly licensed surety or other surety approved by the Director of the Budget, said bond to be in the penal sum of not less than ten thousand dollars ($10,000), and conditioned upon the faithful performance of the duties of the office and the true and correct accounting of all funds received by such secretary by virtue of such office. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. Nothing in this Chapter shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer, derived from fees and fines collected under the provisions of this Chapter and received by the State Treasurer in the manner aforesaid. (1933, c. 179, s. 14; 1943, c. 354, s. 1; 1957, c. 1184, s. 1; 1969, c. 844, s. 4; 1971, c. 355, s. 1; c. 616, ss. 1, 2.)

Editor's Note.—

The 1969 amendment added the next-to-last sentence.

The first 1971 amendment deleted the third sentence.

The second 1971 amendment repealed

the first amendment and substituted "State Personnel Department" for "Board with the approval of the Director of the Budget of the State of North Carolina" at the end of the third sentence.

§ 88-15. Compensation and expenses of Board members; inspectors; reports; budget; audit.—Each member of the Board of Cosmetic Art Examiners shall receive for such services an annual salary in an amount to be fixed by the Director of the Budget, and shall be reimbursed for actual necessary expenses incurred in the discharge of such duties, not to exceed eight dollars ($8.00) per day for subsistence, plus the actual traveling expenses, or an allowance of seven cents (7¢) per mile where such member uses his or her personally owned automobile.

Said Board, with the approval of the Director of the Budget, shall appoint necessary inspectors who shall be experienced in all branches of cosmetic art. The salaries for such inspectors shall be fixed by the State Personnel Department. The inspectors or agents so appointed shall perform such duties as may be prescribed by the Board. Any inspector appointed under authority of this section or any member of the Board shall have the authority at all reasonable hours to examine cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies or training schools with respect to and in compliance with the provisions of this Chapter. The inspectors and agents appointed under authority of this Chapter shall make such reports to the Board of Cosmetic Art Examiners as said Board may require. The said Board shall, on or before June first of each year, submit a budget to the Director of the Budget for the ensuing fiscal year, which shall begin July first of each year. The said budget so submitted shall include all estimated receipts and expenditures for the ensuing fiscal year including the estimated compensation and expenses of Board members. The said budget shall be subject to the approval of the Director of the Budget and no expenditures shall be made unless the same shall have been set up in the budget adopted by the Board of Cosmetic Art Examiners, and approved by the Director of the Budget of the State of North Carolina; that all salaries and expenses in connection with the administration of this Chapter shall be paid upon a warrant drawn on the State Treasurer, said warrants to be drawn by the secretary of the Board and approved by the State Auditor.

The provisions of the Executive Budget Act and the Personnel Act shall fully apply to the administration of this Chapter.

There shall be annually made by the Auditor of the State of North Carolina a full audit and examination of the receipts and disbursements of the State Board of Cosmetic Art Examiners. The State Board shall report annually to the Governor a full statement of receipts and disbursements and also a full statement of its work during the year. (1933, c. 179, s. 15; 1935, c. 54, s. 3; 1941, c. 234, s. 2; 1943, c. 354, s. 2; 1957, c. 1184, s. 2; 1971, c. 355, ss. 2, 3; c. 616, ss. 1, 3.)

Editor's Note.—

The first 1971 amendment substituted "State Personnel Department" for "Director of the Budget" near the middle of the first paragraph and substituted "State Personnel Department" for "Board with the approval of the Director of the Budget of the State of North Carolina" at the end of the second sentence of the second paragraph.

The second 1971 amendment repealed the first amendment and substituted "State Personnel Department" for "Board with the approval of the Director of the Budget of the State of North Carolina" at the end of the second sentence of the second paragraph.

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.

§ 89-10. Effect of certification; seals.

Direct Control by Registrant Required for Use of Seal by Others.—See opinion of Attorney General to Mr. B.A. Saholsky, 41 N.C.A.G. 423 (1971).

§ 89-13. Corporate or partnership practice of engineering or land surveying.—A corporation or partnership may engage in the practice of engineering or land surveying in this State: Provided, however, the person or persons connected with such corporation or partnership in charge of the designing or supervision which constitutes such practice is or are registered as herein required of professional engineers and land surveyors. The same exemptions shall apply to corporations and partnerships as apply to individuals under this chapter; provided further, that all corporations hereunder shall be subject to the provisions of chapter 55B of the General Statutes of North Carolina. (1921, c. 1, s. 14; C. S., s. 6055(p); 1951, c. 1084, s. 1; 1969, c. 718, s. 18.)

Editor's Note. — The 1969 amendment, effective Jan. 1, 1970, added the proviso to the second sentence.

§ 89-14. Land surveyors.

Local Modification. — Alleghany: 1969, c. 227; Stanly: 1967, c. 925; Wilkes: 1967, c. 924; 1969, c. 227; Yadkin: 1969, c. 227.

Chapter 89A.

Landscape Architects.

§ 89A-1. Definitions.—(a) "Board" shall mean the North Carolina Board of Landscape Architects, established by § 89A-3.

(b) "Landscape architect" shall mean a person who, on the basis of demonstrated knowledge acquired by professional education or practical experience, or both, has been granted, and holds a current certificate entitling him to use the title "landscape architect" in North Carolina under the authority of this chapter.

(c) "Landscape architecture," or the "practice of landscape architecture" shall mean the preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public and private use and enjoyment, embracing drainage, soil conservation, grading and planting plans and erosion control, in accordance with the accepted professional standards of public health, safety and welfare. (1969, c. 672, s. 1.)

Editor's Note. — Session Laws 1969, c. 672, s. 11, makes the act effective July 1, 1969.

§ 89A-2. Use of title "landscape architect" without registration prohibited; use of seal.—(a) On and after January 1, 1970, no person shall use the designation "landscape architect," "landscape architecture," or "landscape architectural," or advertise any title or description tending to convey the impression that he is a landscape architect unless such person is registered or has obtained a temporary permit as a landscape architect in the manner hereinafter provided and shall thereafter comply with the provisions of this chapter. Every holder of a certificate shall display it in a conspicuous place in his principal office, place of business or employment.

(b) Nothing in this chapter shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering or land surveying, nor to restrict or otherwise affect the rights of any person licensed to practice architecture under chapter 83, or engineering or land surveying under chapter 89 of the General Statutes; or to restrict any person from engaging in the occupation of grading lands whether by hand tools or machinery, or the planting, maintaining or marketing of plants or plant materials: Provided, however, that no individual shall use the title "landscape architect" unless he has complied with the provisions of this chapter.

(c) Each landscape architect shall, upon registration, obtain a seal of the design authorized by the Board, bearing the name of the registrant, date of registration, number of certificate and the legend "N.C. Registered Landscape Architect." Such seal may be used only while the registrant's certificate is in full force and effect.

Nothing in this chapter shall be construed as authorizing the use or acceptance of the seal of a landscape architect in lieu of or substitute for the seal of an architect, engineer or land surveyor. (1969, c. 672, s. 2.)

§ 89A-3. North Carolina Board of Landscape Architects; appointments; powers.—(a) There is hereby created a North Carolina Board of Land-

scape Architects, which shall consist of five members appointed by the Governor. Each member of the Board shall have been engaged in the practice of landscape architecture in the State of North Carolina at least five years.

The terms of the members of the Board first appointed shall expire as follows: One member July 1, 1971, two members July 1, 1972, and two members July 1, 1973. Thereafter, appointments shall be for four-year terms, and each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term.

(b) The Board shall elect annually from its members a chairman and a vice-chairman and shall hold such meetings during the year as it may determine to be necessary, one of which shall consist of the annual meeting. A quorum of the Board shall consist of not less than three members.

(c) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction. The Board shall have the power to make such rules not inconsistent with law as may be necessary in the performance of its duties.

(d) The Board shall elect a secretary, who may or may not be a member of the Board, and who shall hold office at the pleasure of the Board. The members of the Board shall not be compensated except that the secretary shall receive such salary as is fixed by the Board. The members of the Board shall, however, be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this chapter. (1969, c. 672, s. 3.)

§ 89A-4. Application, examination, certificate.—(a) Any person hereafter desiring to be registered and licensed to use the title "landscape architect" in the State, shall make a written application for examination to the Board, on a form prescribed by the Board, together with such evidence of his qualifications as may be prescribed by rules and regulations of the Board. Minimum qualifications under such rules shall require that the applicant be a United States citizen, at least twenty-one years of age and of good moral character; and that he shall have graduated from a four-year course of study in landscape architecture in a college approved by the Board, with at least three years practical exprience under the supervision of an experienced practicing landscape architect, or in lieu of such graduation or experience, such equivalent combination of education and experience as may be prescribed by the Board.

(b) If said application is satisfactory to the Board, and is accompanied by the fees required by this chapter, then the applicant shall be entitled to an examination to determine his qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to use the title "landscape architect" in North Carolina. Examinations shall be held at least once a year at a time and place to be fixed by the Board which shall determine the subjects and scope of the examination.

(c) The Board, within its discretion, may issue temporary permits pending examinations, or without examination may grant licenses, by reciprocity, to persons holding a license or certificate in landscape architecture from any legally constituted board of examiners in another state whose registration requirements are deemed to be equal or equivalent to those of this State.

(d) Provided that his application and application fee be received by the Board prior to the first day of July, 1971, any applicant who presents evidence satisfactory to the Board that he was actively engaged in the practice of landscape architecture as herein defined, on or before July 1, 1968, shall be issued a certificate without the requirement for examination. (1969, c. 672, s. 4; 1971, c. 162.)

Editor's Note. — The 1971 amendment substituted "1971" for "1970" in subsection (d).

§ **89A-5. Annual renewal of certificate.**—Every registrant under this chapter shall, on or before the first day of July in each year, obtain a renewal of a certificate for the ensuing year, by application, accompanied by the required fee; and upon failure to renew, his certificate shall be automatically revoked; but such certificate may be renewed at any time within one year upon payment of the prescribed renewal fee and penalty for late renewal, as provided by this chapter, upon evidence satisfactory to the Board that the applicant has not used his certificate or title after notice of revocation and is otherwise eligible for registration under the provisions of this chapter. (1969, c. 672, s. 5.)

§ **89A-6. Fees.**—Fees to be determined by the Board, but not to exceed the amounts specified herein, shall be paid to the Board at the times specified by the Board: application fee, $25.00; examination fee, $50.00; license by reciprocity, $50.00; renewal fee, $25.00; late renewal penalty, $10.00; reissue of certificate, $10.00; temporary permit, $25.00. (1969, c. 672, s. 6.)

§ **89A-7. Refusal, revocation or suspension of certificate.**—The Board may, in accordance with the provisions of chapter 150, Uniform Revocation of Licenses, of the General Statutes of North Carolina, (i) deny permission to take an examination duly applied for; (ii) deny license after examination for any cause other than failure to pass; (iii) withhold renewal of a license for cause; and (iv) suspend or revoke a license. Grounds for such action or actions shall be dishonest practice, unprofessional conduct, incompetence, conviction of a felony or addiction to habits of such character as to render him unfit to continue professional practice. The procedure for all such actions shall be in accordance with the provisions of chapter 150 of the General Statutes. (1969, c. 672, s. 7.)

§ **89A-8. Violation a misdemeanor; injunction to prevent violation.**—(a) It shall be a misdemeanor for any person to use, or to hold himself out as entitled to practice under, the title of landscape architect or landscape architecture unless he is duly registered under the provisions of this chapter.

(b) The Board may appear in its own name in the courts of the State and apply for injunctions to prevent violations of this chapter, in accordance with the provisions of G.S. 150-31. (1969, c. 672, s. 8.)

Chapter 90.

Medicine and Allied Occupations.

Article 1.

Practice of Medicine.

Article 1A.

Treatment of Minors.

Article 2.

Dentistry.

Article 4.

Pharmacy.

Part 1. Practice of Pharmacy.

Article 5.

North Carolina Controlled Substances Act.

Article 15.

Autopsies.

Sec.

Article 15A.

Uniform Anatomical Gift Act.

Article 15B.

Blood Banks.

Article 16.

Dental Hygiene Act.

Article 17.

Dispensing Opticians.

Article 18.

Physical Therapy.

Article 18A.

Practicing Psychologists.

ARTICLE 1.

Practice of Medicine.

§ 90-9. Examination for license; scope; conditions and prerequisites.—It shall be the duty of the Board of Medical Examiners to examine for license to practice medicine or surgery, or any of the branches thereof, every applicant who complies with the following provisions: He shall, before he is admitted to examination, satisfy the Board that he has an academic education equal to the entrance requirements of the University of North Carolina, or furnish a certificate from the superintendent of public instruction of the county that he has passed an examination upon his literary attainments to meet the requirements of entrance in the regular course of the State University. He shall exhibit a diploma or furnish satisfactory proof of graduation from a medical college or an osteopathic college approved by the American Osteopathic Association at the time of his graduation, which time of graduation shall have been on January 1, 1960 or subsequent thereto and which medical and osteopathic schools shall require an attendance of not less than four years or for a lesser period of time approved by the Board, and supply such facilities for clinical and scientific instruction as shall meet the approval of the Board.

The examination shall cover the branches of medical science and subjects which the Board deems necessary to determine competence to practice medicine.

If on such examination the applicant is found competent, the Board shall grant him a license authorizing him to practice medicine or surgery or any of the branches thereof.

Applicants shall be examined by number only; names and other identifying information shall not appear on examination papers. (Rev., s. 4498; 1913, c. 20, ss. 2, 3, 6; C. S., s. 6613; 1921, c. 47, s. 1; 1969, c. 612, s. 1; c. 929, s. 1; 1971, c. 1150, s. 1.)

Editor's Note.—The first 1969 amendment, effective July 1, 1969, rewrote the portion of the last sentence of the first paragraph preceding the semicolon and eliminated the former last paragraph, providing for a quorum of the Board and requiring that four of those present be agreed as to the qualification of the applicant.

The second 1969 amendment deleted "approved by the American Medical Association at the time of his graduation" following "medical college" in the last sentence of the first paragraph.

The 1971 amendment in the last sentence of the first paragraph, inserted "or for a lesser period of time approved by the Board," and deleted "but the requirement of four years' attendance at a school shall not apply to those graduating prior to January the first, nineteen hundred" at the end of that sentence. The amendment also deleted a former second paragraph defining the branches of medical science covered by the examination, and added the present second paragraph.

§ 90-10. Provision in lieu of examination.—In lieu of the above examination, the Board may grant a license to an applicant who is found to have passed the examination given by the National Board of Medical Examiners, provided the applicant meets the other qualifications set forth in this Article. (C. S., s. 6614; 1921, c. 41, s. 2; Ex. Sess. 1921, c. 44, s. 4; 1969, c. 612, s. 2; c. 929, s. 2; 1971, c. 1150, s. 2.)

Editor's Note. — The 1971 amendment rewrote this section as previously amended in 1969.

§ 90-11. Qualifications of applicant for license.—Every person making application for a license to practice medicine or surgery in the State shall be not less than 21 years of age, and of good moral character, before any license can be granted by the Board of Medical Examiners. (C. S., s. 6615; 1921, c. 47, s. 3; Ex. Sess. 1921, c. 44, s. 5; 1971, c. 1150, s. 3.)

Editor's Note. — The 1971 amendment deleted a proviso formerly appearing at the end of this section.

§ 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.

§ 90-13. When license without examination allowed.—The Board of Medical Examiners shall in their discretion issue a license to any applicant to practice medicine and surgery in this State without examination if said applicant exhibits a diploma or satisfactory proof of graduation from a medical or osteopathic college, approved as provided in G.S. 90-9 and requiring an attendance of not less than four years or for such lesser period of time approved by the Board, and a license issued to him to practice medicine and surgery by the Board of Medical Examiners of another state. (1907, c. 890; 1913, c. 20, s. 3; C. S., s. 6617; 1969, c. 612, s. 3; 1971, c. 1150, s. 4.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, substituted "medical or osteopathic college, approved as provided in G.S. 90-9 and" for "medical college in good standing."

The 1971 amendment inserted "or for such lesser period of time approved by the Board."

§ 90-14. Board may rescind license.—The Board shall have the power to revoke and rescind any license granted by it, when, after due notice and hearing, it shall find that any physician licensed by it has been guilty of grossly immoral conduct, or of producing or attempting to produce a criminal abortion, or, by false and fraudulent representations, has obtained or attempted to obtain, practice in his profession, or is habitually addicted to the use of morphine, cocaine or other narcotic drugs, or is habitually addicted to the use of marijuana, barbitu-

rates, demerol or any other habit-forming drug or derivative of such drug, or has by false and fraudulent representations of his professional skill obtained, or attempted to obtain, money or anything of value, or has advertised or held himself out under a name other than his own, or has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which he holds an earned diploma or degree, or is guilty of any fraud or deceit by which he was admitted to practice, or has been guilty of any unprofessional or dishonorable conduct unworthy of, and affecting, the practice of his profession, or has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude, or has been adjudicated a mental incompetent or whose mental condition renders him unable safely to practice medicine. Upon the hearing before said Board of any charge involving a conviction of such felony or other criminal offense, a transcript of the record thereof certified by the clerk of the court in which such conviction is had, shall be sufficient evidence to justify the revocation or rescinding of such license. And, for any of the above reasons, the said Board of Medical Examiners may refuse to issue a license to an applicant. The findings and actions of the Board of Medical Examiners in revoking or rescinding and refusing to issue licenses under this section, shall be subject to review upon appeal to the superior court, as hereinafter provided in this article. The Board of Medical Examiners may, in its discretion, and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked and rescinded. (C. S., s. 6618; 1921, c. 47, s. 4; Ex. Sess. 1921, c. 44, s. 6; 1933, c. 32; 1953, c. 1248, s. 2; 1969, c. 612, s. 4; c. 929, s. 6.)

Editor's Note.—

The first 1969 amendment, effective July 1, 1969, substituted "an earned diploma or degree" for "a license" in the first sentence.

The second 1969 amendment rewrote the last sentence.

Quoted in In re Kincheloe, 272 N.C. 116, 157 S.E.2d 833 (1967).

Cited in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969).

§ 90-14.6. Evidence admissible.

Quoted in In re Kincheloe, 272 N.C. 116, 157 S.E.2d 833 (1967).

§ 90-14.10. Scope of review.

Quoted in In re Kincheloe, 272 N.C. 116, 157 S.E.2d 833 (1967).

§ 90-14.11. Appeal to Supreme Court; appeal bond.

Stated in In re Kincheloe, 272 N.C. 116, 157 S.E.2d 833 (1967).

§ 90-15. License fee; salaries, fees, and expenses of Board.—Each applicant for a license by examination shall pay to the treasurer of the Board of Medical Examiners of the State of North Carolina a fee which shall be prescribed by said Board in an amount not exceeding the sum of one hundred dollars ($100.00) before being admitted to the examination. Whenever any license is granted without examination, as authorized in G.S. 90-13, the applicant shall pay to the treasurer of the Board a fee in an amount to be prescribed by the Board not in excess of one hundred dollars ($100.00). Whenever a limited license is granted as provided in G.S. 90-12, the applicant shall pay to the treasurer of the Board a fee of fifty dollars ($50.00), except where a limited license to practice within the confines of a hospital for the purpose of education or training, the applicant shall pay a fee of ten dollars ($10.00). A fee of ten dollars ($10.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the treasurer of the Board of Medical Examiners of the State of North Carolina, to be held by him as a fund for the use of said Board. The compensation and expenses of the members and officers of the said Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to en-

force the laws regulating the practice of medicine or surgery shall be paid out of said fund, upon the warrant of the said Board and all expenses proper and necessary in the opinion of the officers and members of said Board shall be fixed by the Board but shall not exceed ten dollars ($10.00) per day per member for time spent in the performance and discharge of his duties as a member of said Board, and reimbursement for travel and other necessary expenses incurred in the performance of his duties as a member of said Board. Any unexpended sum or sums of money remaining in the treasury of said Board at the expiration of the terms of office of the members thereof shall be paid over to their successors in office.

For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount. (1858-9, c. 258, s. 13; Code, s. 3130; Rev., s. 4501; 1913, c. 20, ss. 4, 5; C. S., s. 6619; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 7; 1953, c. 187; 1969, c. 929, s. 4; 1971, c. 817, s. 2; c. 1150, s. 5.)

Editor's Note.—

The 1969 amendment increased the fee in the first sentence from $50.00 to $100.00.

The first 1971 amendment added the last paragraph.

The second 1971 amendment deleted a proviso formerly appearing at the end of the first sentence.

§ 90-15.1. Registration every two years with Board.—Every person heretofore or hereafter licensed to practice medicine by said Board of Medical Examiners shall, during the month of January, 1958, and during the month of January in every even-numbered year thereafter, register with the secretary-treasurer of said Board his name and office and residence address and such other information as the Board may deem necessary and shall pay a registration fee fixed by the Board not in excess of ten dollars ($10.00). In the event a physician fails to register as herein provided he shall pay an additional amount of ten dollars ($10.00) to the Board. Should a physician fail to register and pay the fees imposed, and should such failure continue for a period of thirty days, the license of such physician may be suspended by the Board, after notice and hearing at the next regular meeting of the Board. Upon payment of all fees and penalties which may be due, not to exceed a total of one hundred ($100.00) dollars of accumulated fees and penalties, the license of any such physician shall be reinstated. (1957, c. 597; 1969, c. 929, s. 5.)

Editor's Note. — The 1969 amendment increased the fee in the first sentence from five dollars to ten dollars and inserted "not to exceed a total of one hundred ($100.00) dollars of accumulated fees and penalties" in the last sentence.

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

§ 90-18. Practicing without license; practicing defined; penalties.—No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless he shall have been first licensed and registered so to do in the manner provided in this article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, he shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100), or imprisoned at the discretion of the court for each and every offense.

Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another person: Provided, that the following cases shall not come within the definition above recited:

(1) The administration of domestic or family remedies in cases of emergency.

(2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.

(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

(4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.

(5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.

(6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.

(7) The practice of midwifery by any woman who pursues the vocation of midwife.

(8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.

(9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.

(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.

(11) The practice of medicine or surgery by any reputable physician or surgeon in a neighboring state coming into this State for consultation with a resident registered physician. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

(12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. "Radiology" shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of x ray. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of x rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of x rays; or who treats any disease or condition of the human body by the application of x rays or radium. Nothing in this subsection shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12 of this Chapter.

(13) Any act, task or function performed by an assistant to a person licensed as a physician by the Board of Medical Examiners when

a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and

b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and

c. The services of the assistant are limited to assisting the physician

in the particular field or fields for which the assistant has been trained, approved and registered;

provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom. (1858-9, c. 258, s. 2; Code, s. 3122; 1885, c. 117, s. 2; c. 261; 1889, c. 181, ss. 1, 2; Rev., ss. 3645, 4502; C. S., s. 6622; 1921, c. 47, s. 7; Ex. Sess. 1921, c. 44, s. 8; 1941, c. 163; 1967, c. 263, s. 1; 1969, c. 612, s. 5; c. 929, s. 3; 1971, c. 817, s. 1; c. 1150, s. 6.)

Editor's Note.—

The 1967 amendment rewrote subdivision (10).

The first 1969 amendment, effective July 1, 1969, deleted former subdivision (9), relating to the practice of osteopathy, and renumbered former subdivisions (10) through (13) as (9) through (12).

The second 1969 amendment reenacted subdivision (9), which had been struck out by the first amendment.

The first 1971 amendment, in the second paragraph, added subdivision (14).

The second 1971 amendment, in the second paragraph, deleted former subdivision (12) and redesignated former subdivisions (13) and (14) as present subdivisions (12) and (13).

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.

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.)

"Minor" Is Person under 18. — See opinion of Attorney General to Lena S. Davis, 41 N.C.A.G. 489 (1971).

§ 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.)

§ 90-21.5. Consent of minors 18 years of age or older, etc.—(a) Notwithstanding the provisions of G.S. 90-21.1, G.S. 90-21.2 and G.S. 90-21.3, any minor who is 18 years of age or older or is emancipated may consent to any medical treatment, dental and health services for himself or for his child.

(b) Any minor may give effective consent for medical health services to determine the presence of or to treat venereal diseases and other diseases reportable under G.S. 130-81, and the consent of no other person shall be necessary. (1971, c. 35.)

Applicability of Statute to Specific Treatment.—See opinion of Attorney General to Lena S. Davis, 41 N.C.A.G. 489 (1971).

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.

(c) Nominations and elections of members of the North Carolina State Board of Dental Examiners shall be as follows:

(1) An election shall be held each year to elect two members of the Board of Dental Examiners, each to take office on the first day of August following the election and to hold office for a term of three years and until his successor has been elected and shall qualify; provided that if in any year the election of the members of such Board for that year shall not have been completed by August first of that year, then the said members elected that year shall take office immediately after the completion of the election and shall hold office until the first of August of the third year thereafter and until their successors are elected and qualified.

(2) Every dentist with a current North Carolina license residing in North Carolina shall be eligible to vote in all elections. The holding of such a license to practice dentistry in North Carolina shall constitute reg-

istration to vote in such elections. The list of licensed dentists shall constitute the registration list for elections.

(3) All elections shall be conducted by the Board of Dental Examiners which is hereby constituted a Board of Dental Elections. If a member of the Board of Dental Examiners whose position is to be filled at any election is nominated to succeed himself, and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Dental Elections for that election and the remaining members of the Board of Dental Elections shall proceed and function without his participation.

(4) Nomination of candidates for election shall be made to the Board of Dental Elections by a written petition signed by not less than 10 dentists licensed to practice in North Carolina and residing in North Carolina, and filed with said Board of Dental Elections subsequent to January first of the year in which the election is to be held and not later than midnight of the 20th day of May of such year, or not later than such earlier date (not before April 1) as may be set by the Board of Dental Elections: Provided, that not less than 10 days' notice of such earlier date shall be given to all dentists qualified to sign a petition of nomination. The Board of Dental Elections shall, before preparing ballots, notify all persons who have been duly nominated of their nomination.

(5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Dental Elections or its designated secretary at any time prior to the closing of the polls in any election.

(6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Dental Elections shall prescribe, ballots containing, in alphabetical order, the names of all nominees; and each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Dental Elections. At such time as may be fixed by the Board of Dental Elections a ballot and a return official envelope addressed to said Board shall be mailed to each dentist licensed to practice in North Carolina and residing in North Carolina, together with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

"Serial No. of Envelope .....
Signature of Voter .....
Address of Voter .....
.....

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)."

The Board of Dental Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless, within the time hereinafter provided, it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

(7) The date and hour fixed by the Board of Dental Elections as the latest

time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.

(8) The said ballots shall be canvassed by the Board of Dental Elections beginning at noon on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed dentists may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of the ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

(9) If more than two nominees receive a majority of the votes cast, the two receiving the highest number of votes shall be declared elected. If only two of the nominees receive a majority of the votes cast, they shall be declared elected. If only one of the nominees shall receive a majority of the votes cast, he shall be declared elected and the Board of Dental Elections shall thereupon order a second election to determine a contest between the two remaining nominees receiving the highest number of votes. If no candidate shall receive a majority of the votes cast, the said Board shall order a second election to determine a contest between the four candidates receiving the highest number of votes. In any election if there is a tie between candidates, the tie shall be resolved by the vote of the Board of Dental Examiners, provided that if a member of that Board is one of the candidates in the tie, he may not participate in such vote.

(10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements: Provided, that if the second election is between four candidates, then the two receiving the highest number of votes shall be declared elected.

(11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations because of lack of plural or proper nominations or death, or withdrawal, or disqualification or any other reason, there shall be (i) only two candidates for two positions,

they shall be declared elected by the Board of Dental Elections, or (ii) only one candidate for one position, he shall be declared elected by the Board of Dental Elections, or (iii) no candidate for two positions, the two positions shall be filled by the Board of Dental Examiners, or (iv) no candidate for one position, the position shall be filled by the Board of Dental Examiners, or (v) one candidate for two positions, the one candidate shall be declared elected by the Board of Dental Elections and one qualified dentist shall be elected to the other position by the Board of Dental Examiners. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the Board of Dental Examiners. In the event of the death or resignation of a member of the Board of Dental Examiners, after taking office, his position shall be filled for the unexpired term by the Board of Dental Examiners.

(12) An official list of licensed dentists shall be kept at an office of the Board of Dental Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed dentist. As soon as the voting in any election begins a list of the licensed dentists shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.

(13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the the Board of Dental Elections for a period of six months following the close of an election.

(14) From any decision of the Board of Dental Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Article 33 of Chapter 143 of the General Statutes of North Carolina.

(15) The Board of Dental Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed dentists residing in North Carolina.

(1971, c. 755, s. 1.)

Editor's Note.—

The 1971 amendment added the last sentence in subsection (c)(4).

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

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; exemptions.—(a) No person shall engage in the practice of dentistry in this State, or offer or attempt to do so, unless such person is the holder of a valid license or certificate of renewal of license duly issued by the North Carolina State Board of Dental Examiners.

(b) A person shall be deemed to be practicing dentistry in this State who does, undertakes or attempts to do, or claims the ability to do any one or more of the following acts or things which, for the purposes of this Article, constitute the practice of dentistry:

(1) Diagnoses, treats, operates, or prescribes for any disease, disorder, pain, deformity, injury, deficiency, defect, or other physical condition of

the human teeth, gums, alveolar process, jaws, maxilla, mandible, or adjacent tissues or structures of the oral cavity;

(2) Removes stains, accretions or deposits from the human teeth;

(3) Extracts a human tooth or teeth;

(4) Performs any phase of any operation relative or incident to the replacement or restoration of all or a part of a human tooth or teeth with any artifical substance, material or device;

(5) Corrects the malposition or malformation of the human teeth;

(6) Administers an anesthetic of any kind in the treatment of dental or oral diseases or physical conditions, or in preparation for or incident to any operation within the oral cavity; provided, however, that this subsection shall not apply to a lawfully qualified nurse or anesthetist who administers such anesthetic under the supervision and direction of a licensed dentist or physician;

(7) Takes or makes an impression of the human teeth, gums or jaws;

(8) Makes, builds, constructs, furnishes, processes, reproduces, repairs, adjusts, supplies or professionally places in the human mouth any prosthetic denture, bridge, appliance, corrective device, or other structure designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth, except to the extent the same may lawfully be performed in accordance with the provisions of G.S. 90-29.1 and G.S. 90-29.2;

(9) Uses a Roentgen or X-ray machine or device for dental treatment or diagnostic purposes, or gives interpretations or readings of dental Roentgenograms or X rays;

(10) Performs or engages in any of the clinical practices included in the curricula of recognized dental schools or colleges;

(11) Owns, manages, supervises, controls or conducts, either himself or by and through another person or other persons, any enterprise wherein any one or more of the acts or practices set forth in subdivisions (1) through (10) above are done, attempted to be done, or represented to be done;

(12) Uses, in connection with his name, any title or designation, such as "dentist," "dental surgeon," "doctor of dental surgery," "D.D.S.," "D.M.D.," or any other letters, words or descriptive matter which, in any manner, represents him as being a dentist able or qualified to do or perform any one or more of the acts or practices set forth in subdivisions (1) through (10) above;

(13) Represents to the public, by any advertisement or announcement, by or through any media, the ability or qualification to do or perform any of the acts or practices set forth in subdivisions (1) through (10) above.

(c) The following acts, practices, or operations, however, shall not constitute the unlawful practice of dentistry:

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

(2) The practice of dentistry, in the discharge of their official duties, by dentists in any branch of the military service of the United States or in the full-time employ of any agency of the United States;

(3) The teaching of dentistry, in dental schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners, by any person or persons licensed to practice dentistry anywhere in the United States or in any country, territory or other recognized jurisdiction; provided, however, that such teaching of dentistry by any person or persons licensed in any jurisdiction other

than a place in the United States must first be approved by the North Carolina State Board of Dental Examiners;

(4) The practice of dentistry in dental schools or colleges in this State approved by the North Carolina State Board of Dental Examiners by students enrolled in such schools or colleges when such practice is performed as a part of their course of instruction and is under the supervision of a dentist who is either duly licensed in North Carolina or qualified under subdivision (3) above as a teacher. Additionally, the practice of dentistry by such students at any location upon patients or inmates of institutions wholly owned or operated by the State of North Carolina or any political subdivision or subdivisions thereof when in the opinion of the dean of such dental school or college or his designee the student's dental education and experience is adequate therefor, subject to review and approval by the said Board of Dental Examiners, and such practice is a part of the course of instruction of such students, is performed under the supervision of a duly licensed dentist acting as a teacher or instructor and is without remuneration except for expenses and subsistence as defined and permitted by the rules and regulations of said Board of Dental Examiners.

(5) The temporary practice of dentistry by licensed dentists of another state or of any territory or country when the same is performed, as clinicians, at meetings of organized dental societies, associations, colleges or similar dental organizations, or when such dentists appear in emergency cases upon the specific call of a dentist duly licensed to practice in this State;

(6) The practice of dentistry by a person who is a graduate of a dental school or college approved by the North Carolina State Board of Dental Examiners and who is not licensed to practice dentistry in this State, when such person is the holder of a valid intern permit, or provisional license, issued to him by the North Carolina State Board of Dental Examiners pursuant to the terms and provisions of this Article, and when such practice of dentistry complies with the conditions of said intern permit, or provisional license;

(7) Any act or acts performed by a dental hygienist when such act or acts are lawfully performed pursuant to the authority of Article 16 of this Chapter 90 or the rules and regulations of the Board promulgated thereunder;

(8) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a Board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of subdivision (3) above;

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

(10) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by the Board, when such functions are performed under the supervision of a dentist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of subdivision (3) above;

(11) The extraoral construction, manufacture, fabrication or repair of prosthetic dentures, bridges, appliances, corrective devices, or other structures designed or constructed as a substitute for a natural human tooth

or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth, by a person or entity not licensed to practice dentistry in this State, when the same is done or performed solely upon a written work order in strict compliance with the terms, provisions, conditions and requirements of G.S. 90-29.1 and G.S. 90-29.2. (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; 1971, c. 755, s. 2.)

Editor's Note.— The 1971 amendment rewrote this section as previously amended in 1953, 1957, 1961 and 1965.

§ 90-29.3. Provisional license.—(a) The North Carolina State Board of Dental Examiners shall, subject to its rules and regulations, issue a provisional license to practice dentistry to any person who is licensed to practice dentistry anywhere in the United States or in any country, territory or other recognized jurisdiction, if the Board shall determine that said licensing jurisdiction imposed upon said person requirements for licensure no less exacting than those imposed by this State. A provisional licensee may engage in the practice of dentistry only in strict accordance with the terms, conditions and limitations of his license and with the rules and regulations of the Board pertaining to provisional license.

(b) A provisional license shall be valid until the date of the announcement of the results of the next succeeding Board examination of candidates for licensure to practice dentistry in this State, unless the same shall be earlier revoked or suspended by the Board.

(c) No person who has failed an examination conducted by the North Carolina State Board of Dental Examiners shall be eligible to receive a provisional license.

(d) Any person desiring to secure a provisional license shall make application therefor in the manner and form prescribed by the rules and regulations of the Board and shall pay the fee prescribed in § 90-39 of this article.

(e) A provisional licensee shall be subject to those various disciplinary measures and penalties set forth in § 90-41 upon a determination of the Board that said provisional licensee has violated any of the terms or provisions of this article. (1969, c. 804, s. 1.)

§ 90-29.4. Intern permit.—The North Carolina State Board of Dental Examiners may, in the exercise of the discretion of said Board, issue to a person who is not licensed to practice dentistry in this State and who is a graduate of a dental school, college, or institution approved by said Board, an intern permit authorizing such person to practice dentistry under the supervision or direction of a dentist duly licensed to practice in this State, subject to the following particular conditions:

(1) An intern permit shall be valid for no more than one year from the date of issue thereof; provided, however, that the Board may, in its discretion, renew such permit for not more than three additional one-year periods; and, provided, further, that no person shall be granted an intern permit or intern permits embracing or covering an aggregate time span of more than 48 calendar months;

(2) The holder of a valid intern permit may practice dentistry only under the supervision or direction of one or more dentists duly licensed to practice in this State;

(3) The holder of a valid intern permit may practice dentistry only (i) as an employee in a hospital, sanatorium, or a like institution which is licensed or approved by the State of North Carolina and approved by the North Carolina State Board of Dental Examiners; or (ii) as an employee of the State of North Carolina or an agency or political subdivision thereof, or any other governmental entity within the State of North Carolina, when said employment is approved by the North Carolina State Board of Dental Examiners;

(4) The holder of a valid intern permit shall receive no fee or fees or compensation of any kind or nature for dental services rendered by him other than such salary or compensation as might be paid to him by the entity specified in subdivision (3) above wherein or for which said services are rendered;

(5) The holder of a valid intern permit shall not, during the term of said permit or any renewal thereof, change the place of his internship without first securing the written approval of the North Carolina State Board of Dental Examiners;

(6) The practice of dentistry by the holder of a valid intern permit shall be strictly limited to the confines of and to the registered patients of the hospital, sanatorium or institution to which he is attached or to the persons officially served by the governmental entity by whom he is employed;

(7) Any person seeking an intern permit shall first file with the North Carolina State Board of Dental Examiners such papers and documents as are required by said Board, together with the application fee authorized by G.S. 90-39. A fee authorized by G.S. 90-39 shall be paid for any renewal of said intern permit. Such person shall further supply to the Board such other documents, materials or information as the Board may request;

(8) Any person seeking an intern permit or who is the holder of a valid intern permit shall comply with such limitations as the North Carolina State Board of Dental Examiners may place or cause to be placed, in writing, upon such permit, and shall comply with such rules and regulations as the Board might promulgate relative to the issuance and maintenance of said permit in the practice of dentistry relative to the same;

(9) The holder of an intern permit shall be subject to the provisions of G.S. 90-41. (1971, c. 755, s. 3.)

§ 90-30. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses.—The North Carolina State Board of Dental Examiners shall grant licenses to practice dentistry to such applicants who are graduates of a reputable dental institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, subject, however, to the further provisions of this section and of the provisions of this Article.

The applicant shall be of good moral character, at least 21 years of age at the time the application for examination is filed. The application shall be made to the said Board in writing and shall be accompanied by evidence satisfactory to said Board that the applicant is a person of good moral character, has an academic education, the standard of which shall be determined by the said Board; that he is a graduate of and has a diploma from a reputable dental college or the dental department of a reputable university or college recognized, accredited and approved as such by the said Board.

The North Carolina State Board of Dental Examiners is authorized to conduct both written or oral and clinical examinations of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant license to any person who, in its discretion, is found deficient in said examination, or to any person guilty of cheating, deception or fraud during such examination, or whose examination discloses to the satisfaction of the Board, a deficiency in academic education. The Board may employ such dentists found qualified therefor by the Board, in examining applicants for licenses as it deems appropriate.

The North Carolina State Board of Dental Examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross im-

morality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the Board, renders the applicant unfit to practice dentistry.

Any license obtained through fraud or by any false representation shall be void ab initio and of no effect. (1935, c. 66, s. 7; 1971, c. 755, s. 4.)

Editor's Note. — The 1971 amendment added the last sentence of the third paragraph.

§ 90-31. Annual renewal of licenses.—The laws of North Carolina now in force, having provided for the annual renewal of any license issued by the North Carolina State Board of Dental Examiners, it is hereby declared to be the policy of this State, that all licenses heretofore issued by the North Carolina State Board of Dental Examiners or hereafter issued by said Board are subject to annual renewal and the exercise of any privilege granted by any license heretofore issued or hereafter issued by the North Carolina State Board of Dental Examiners is subject to the issuance on or before the first day of January of each year of a certificate of renewal of license.

On or before the first day of January of each year, each dentist engaged in the practice of dentistry in North Carolina shall make application to the North Carolina State Board of Dental Examiners and receive from said Board, subject to the further provisions of this section and of this Article, a certificate of renewal of said license.

The application shall show the serial number of the applicant's license, his full name, address and the county in which he has practiced during the preceding year the date of the original issuance of license to said applicant and such other information as the said Board from time to time may prescribe, at least six months prior to January first of any year.

If the application for such renewal certificate, accompanied by the fee required by this Article, is not received by the Board before January 31 of each year, an additional fee of ten dollars ($10.00) shall be charged for renewal certificate. If such application, accompanied by the renewal fee, plus the additional fee, is not received by the Board before March 31 of each year, every person thereafter continuing to practice dentistry without having applied for a certificate of renewal shall be guilty of the unauthorized practice of dentistry and shall be subject to the penalties prescribed by G.S. 90-40. (1935, c. 66, s. 8; 1953, c. 564, s. 5; 1961, c. 446, s. 6; 1971, c. 755, s. 5.)

Editor's Note.— The 1971 amendment substituted in the fourth paragraph "ten dollars ($10.00)" for "five dollars ($5.00)."

§ 90-34. Refusal to grant renewal of license.—For nonpayment of fee or fees required by this Article, or for violation of any of the terms or provisions of G.S. 90-41, the North Carolina State Board of Dental Examiners may refuse to issue a certificate for renewal of license. As used herein the term "license" shall include license, provisional license or intern permit. (1935, c. 66, s. 8; 1971, c. 755, s. 6.)

Editor's Note. — The 1971 amendment rewrote this section.

§ 90-36. Licensing practitioners of other states.—The North Carolina State Board of Dental Examiners may, in its discretion, issue a license to practice dentistry in this State without an examination other than clinical to a legal and ethical practitioner of dentistry who moves into North Carolina from another state or territory of the United States, whose standard of requirements is equal to that of the State of North Carolina and in which such applicant has conducted a legal and ethical practice of dentistry for at least five years, next preceding his or her removal and who has not, during his period of practice, been found guilty by the state regulatory agency charged with the responsibility there-

for of the violation of the ethics of his profession, nor found guilty by a court of competent jurisdiction of the violation of the laws of the state which issued license to him, or of the criminal laws of the United States, or whose license to practice dentistry has been revoked or suspended by a duly constituted authority.

Application for license to be issued under the provisions of this section shall be accompanied by a certificate from the dental board or like board of the state from which said applicant removed, certifying that the applicant is the legal holder of a license to practice dentistry in that state, and for a period of five years immediately preceding the application has engaged in the practice of dentistry; is of good moral character and that during the period of his practice no charges have been filed with said board against the applicant for the violation of the laws of the state or of the United States, or for the violation of the ethics of the profession of dentistry.

Application for a license under this section shall be made to the North Carolina State Board of Dental Examiners within the six months of the date of the issuance of the certificate hereinbefore required, and said certificate shall be accompanied by the diploma or other evidence of the graduation from a reputable, recognized and approved dental college, school or dental department of a college or university.

Any license issued upon the application of any dentist from any other state or territory shall be subject to all of the provisions of this Article with reference to the license issued by the North Carolina State Board of Dental Examiners upon examination of applicants and the rights and privileges to practice the profession of dentistry under any license so issued shall be subject to the same duties, obligations, restrictions and the conditions as imposed by this Article on dentists originally examined by the North Carolina State Board of Dental Examiners. (1935, c. 66, s. 9; 1971, c. 755, s. 7.)

Editor's Note. — The 1971 amendment substituted in the first paragraph "found guilty by the state regulatory agency charged with the responsibility therefor of the violation of the ethics of his profession, nor found guilty by a court of competent jurisdiction of" for "charged with violation of the ethics of his profession, nor with."

§ 90-39. Fees.—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 is authorized to charge and collect fees established by its rules and regulations not exceeding the following:

(1) Each application for general dentistry examination $75.00
(2) Each general dentistry license renewal, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dentist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dentist $50.00
(3) Each provisional license $50.00
(4) Each intern permit or renewal thereof $50.00
(5) Each certificate of license to a resident dentist desiring to change to another state or territory $15.00
(6) Each license issued to a practitioner of another state or territory to practice in this State $75.00
(7) 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 this State ..... $75.00.

(1935, c. 66, s. 12; 1953, c. 564, s. 1; 1961, c. 446, s. 8; 1965, c. 163, s. 3; 1971, c. 755, s. 8.)

Editor's Note.— The 1971 amendment rewrote this section as previously amended in 1953, 1961 and 1965.

§ 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 having obtained a provisional license from said Board; 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; 1969, c. 804, s. 2.)

Editor's Note.—

The 1965 amendment substituted "March 31" for "June 30" near the beginning of the section.

The 1969 amendment inserted "or having obtained a provisional license from said Board" near the beginning of the section.

§ 90-41. Disciplinary action.—(a) The North Carolina State Board of Dental Examiners shall have the power and authority to

(1) Refuse to issue a license to practice dentistry;
(2) Refuse to issue a certificate of renewal of a license to practice dentistry;
(3) Revoke or suspend a license to practice dentistry; and
(4) Invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper;

in any instance or instances in which the Board is satisfied that such applicant or licensee:

(1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;
(2) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his ability to practice dentistry;
(3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;
(4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;
(5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any state or federal narcotic or barbiturate law;
(6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;
(7) Is mentally, emotionally, or physically unfit to practice dentistry or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of his patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice dentistry unless or until such person shall have been subsequently lawfully declared to be mentally competent;
(8) Has employed or procured any person to obtain or solicit professional patronage or has personally solicited professional patronage;
(9) Has permitted the use of his name, diploma or license by another per-

son either in the illegal practice of dentistry or in attempting to fraudulently obtain a license to practice dentistry;

(10) Has engaged in such immoral conduct as to discredit the dental profession;

(11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;

(12) Has been negligent in the practice of dentistry;

(13) Has employed a person not licensed in this State to do or perform any act or service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which under this Article or under Article 16 of this Chapter, can lawfully be done or performed only by a dentist or a dental hygienist licensed in this State;

(14) Is incompetent in the practice of dentistry;

(15) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients;

(16) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;

(17) Has committed any fraudulent or misleading acts in the practice of dentistry;

(18) Has, directly or indirectly, advertised in any manner for professional patronage or business; provided, however, that it shall not be considered advertising for a dentist, duly licensed to practice in this State, to place his name, office address, telephone number, and office hours in an approved register or other publication, or to place his name, followed by the word, "dentist," on the door or window of his office, or to place his name before the public in any other manner expressly approved by the Board;

(19) Has, in the practice of dentistry, committed an act or acts constituting malpractice;

(20) Has used or permitted another to use his name, as a dentist, in promoting the sale or advertisement of any product or service;

(21) Has permitted a dental hygienist or a dental assistant in his employ or under his supervision to do or perform any act or acts violative of this Article, or of Article 16 of this Chapter, or of the rules and regulations promulgated by the Board;

(22) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of dentistry;

(23) Has persistently maintained, in the practice of dentistry, unsanitary offices, practices, or techniques;

(24) Is a menace to the public health by reason of having a serious communicable disease;

(25) Has distributed or caused to be distributed any intoxicant, drug or narcotic for any other than a lawful purpose; or

(26) Has engaged in any unprofessional conduct as the same may be, from time to time, defined by the rules and regulations of the Board.

(b) If any person engages in or attempts to engage in the practice of dentistry while his license is suspended, his license to practice dentistry in the State of North Carolina may be permanently revoked.

(c) The Board may, on its own motion, initiate the appropriate legal proceedings against any person, firm or corporation when it is made to appear to the Board that such person, firm or corporation has violated any of the provisions of this Article or of Article 16.

(d) The Board may appoint, employ or retain an investigator or investigators for the purpose of examining or inquiring into any practices committed in this State that might violate any of the provisions of this Article or of Article 16 or any of the rules and regulations promulgated by the Board.

(e) The Board may employ or retain legal counsel for such matters and purposes as may seem fit and proper to said Board.

(f) As used in this section the term "licensee" includes licensees, provisional licensees and holders of intern permits, and the term "license" includes license, provisional license and intern permit. (1935, c. 66, s. 14; 1957, c. 592, s. 7; 1965, c. 163, s. 4; 1967, c. 451, s. 1; 1971, c. 755, s. 9.)

Editor's Note.—

The 1971 amendment rewrote this section as previously amended in 1957, 1965 and 1967.

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).

Cited in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969).

§ **90-41.1. Hearings.**—(a) With the exception of applicants for license by comity and applicants for reinstatement after revocation, every licensee, provisional licensee, intern, or applicant for license, shall be afforded notice and opportunity to be heard before the North Carolina State Board of Dental Examiners shall 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; or

(6) To revoke or suspend a provisional license or an intern permit; or

(7) To invoke any other disciplinary measures, censure, or probative terms against a licensee, a provisional licensee, or an intern,

such proceedings to be conducted in accordance with the provisions of Chapter 150 of the General Statutes of North Carolina.

(b) In lieu of or as a part of such hearing and subsequent proceedings, the Board is authorized and empowered to enter any consent order relative to the discipline, censure, or probation of a licensee, provisional licensee, an intern, or an applicant for a license, or relative to the revocation or suspension of a license, provisional license, or intern permit.

(c) Following the service of the notice of hearing as required by Chapter 150, the Board and the person upon whom such notice is served shall have the right to conduct adverse examinations, take depositions, and engage in such further discovery proceedings as are permitted by the laws of this State in civil matters. The Board is hereby authorized and empowered to issue such orders, commissions, notices, subpoenas, or other process as might be necessary or proper to effect the purposes of this subsection; provided, however, that no member of the Board shall

be subject to examination hereunder. (1967, c. 451, s. 2; 1969, c. 804, s. 3; 1971, c. 755, s. 10.)

Editor's Note. — The 1969 amendment inserted "provisional licensee" in the introductory language of subsection (a).

The 1971 amendment designated the former section as subsection (a) and added subsections (b) and (c). The amendment also rewrote the introductory language in subsection (a) and added subdivisions (6) and (7) therein.

§ **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 ($20.00) for each day actually engaged in the performance of the duties of his office, said per diem to be fixed by said Board, and all legitimate and necessary expenses incurred in attending meetings of the said Board.

The secretary-treasurer shall, as compensation for his services, both as secretary-treasurer of the Board and a member thereof, be allowed a reasonable annual salary to be fixed by the Board and shall, in addition thereto, receive all legitimate and necessary expenses incurred by him in attending meetings of the Board and in the discharge of the duties of his office.

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

The Board is authorized and empowered to expend from funds collected hereunder such additional sum or sums as it may determine necessary in the administration and enforcement of this Article, and employ such personnel as it may deem requisite to assist in carrying out the administrative functions required by this Article and by the Board. (1935, c. 66, s. 15; 1965, c. 163, s. 5; 1971, c. 755, s. 11.)

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

The 1971 amendment added in the last paragraph the words following "enforcement of this Article."

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

§ **90-48. Rules and regulations of Board; violation a misdemeanor.** —The North Carolina State Board of Dental Examiners shall be and is hereby vested, as an agency of the State, with full power and authority to enact rules and regulations governing the practice of dentistry within the State, provided such rules and regulations are not inconsistent with the provisions of this Article, Such rules and regulations shall become effective 30 days after passage, and the same may be proven, as evidence, by the president and/or the secretary-treasurer of the Board, and/or by certified copy under the hand and official seal of the secretary-treasurer. A certified copy of any rule or regulation shall be receivable in all courts as prima facie evidence thereof if otherwise competent, and any person, firm, or corporation violating any such rule, regulation, or bylaw shall be guilty of a misdemeanor, subject to a fine of not more than two hundred dollars ($200.00) or imprisonment for not more than 90 days for each offense, and each day that this section is violated shall be considered a separate offense.

The Board shall issue every two years to each licensed dentist a compilation or supplement of the Dental Practice Act and the Board rules and regulations, and upon written request therefor by such licensed dentist, a directory of dentists. (1935, c. 66, s. 19; 1957, c. 592, s. 6; 1971, c. 755, s. 12.)

Editor's Note.—

The 1971 amendment added the second paragraph.

§ **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.

§ 90-57.1. Powers of the Board; professional standards.—The Board of Pharmacy shall by regulation and after due notice and hearing, adopt a code of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the practice of the profession of pharmacy. In adopting such a code, or any amendment thereto, the Board shall consider the recommendations of the North Carolina Pharmaceutical Association. (1969, c. 533.)

§ 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 permit 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.

§ 90-61. Application and examination for license; prerequisites.—Every person licensed or registered as a pharmacist on February 4, 1905, under the laws of this State shall be entitled to continue in the practice of his profession until the expiration of the term for which his certificate of registration or license was issued. Every person who shall desire to be licensed as a pharmacist shall file with the secretary of the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time he has spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and such applicant shall appear at a time and place designated by the Board of Pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist. The application referred to above shall be prepared and furnished by the Board of Pharmacy.

In order to become licensed as a pharmacist within the meaning of this Article, an applicant shall be not less than 21 years of age; he shall present to the Board of Pharmacy satisfactory evidence that he is a graduate of a duly accredited school or college of pharmacy and that he has had practical experience in pharmacy under the supervision of a licensed pharmacist, which experience shall be approved by the Board of Pharmacy and shall not be required to exceed one year as may be determined by the Board of Pharmacy; and he shall also pass satisfactorily an examination of the Board of Pharmacy; Provided, that any person who has had two years of college training, and has been filling prescriptions in a drugstore or stores in North Carolina under the supervision of a licensed pharmacist for 15 years or longer, may take the examination as provided above. (1905, c. 108, s. 13; Rev., ss. 4479, 4480; 1915, c. 165; C. S., s. 6658; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94; 1971, c. 481.)

Editor's Note.—
The 1971 amendment, effective July 1, 1971, rewrote the second paragraph.

§ 90-61.1. Pharmacist intern license.—The Board of Pharmacy may license pharmacist interns with the period of such license not to exceed two years. To be licensed as a pharmacist intern, an applicant shall be not less than 20 years of age, shall present to the Board of Pharmacy satisfactory evidence that he is a graduate of a duly accredited school or college of pharmacy, shall have had at least three months of practical experience in pharmacy under the instruction of a licensed pharmacist, which experience shall be approved by the Board of Pharmacy, and shall pass a satisfactory examination by the Board of Pharmacy. A licensed pharmacist intern shall be entitled to the same practice privileges and responsibilities as an assistant registered pharmacist pursuant to Article 4 of Chapter 90 of the General Statutes except that a licensed pharmacist intern may not supervise the rendering of pharmaceutical services by an unlicensed person as provided in G.S. 90-71 or manage a pharmacy as provided in G.S. 90-73. (1971, c. 482, s. 1.)

Editor's Note. — Session Laws 1971, c. 482, s. 2, makes the act effective July 1, 1971.

§ 90-64. Pharmacist licensed by reciprocity.—The Board of Pharmacy may issue a temporary or probationary license to practice pharmacy in this State for a period of not less than one year, without examination, to any person who has been legally registered or licensed as a pharmacist by a board of pharmacy of another state, if the applicant shall present satisfactory evidence of the same qualifications as are required from licentiates in this State and that he was registered or licensed by examination by such other board of pharmacy, and that the standard of competence required by such other board of pharmacy is not lower than that required in this State; provided, that the Board, pursuant to regulations adopted by it, may issue a regular license as a pharmacist to an applicant who has

practiced for one year in this State as a temporary or probationary pharmacist. (1905, c. 108, s. 16; Rev., s. 4482; C. S., s. 6660; 1945, c. 572, s. 2; 1971, c. 468.)

Editor's Note.— The 1971 amendment, effective July 1, 1971, so changed this section as to make a detailed comparison impracticable.

§ 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.

Cited in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969).

Article 5.

North Carolina Controlled Substances Act.

§ 90-86. Title of Article.—This Article shall be known and may be cited as the "North Carolina Controlled Substances Act." (1971, c. 919, s. 1.)

Revision of Articles 5 and 5A.—Session Laws 1971, c. 919, effective Jan. 1, 1972, rewrote Articles 5 and 5A of this Chapter, replacing former Article 5, the Narcotic Drug Act, consisting of §§ 90-86 to 90-113, and former Article 5A, Barbiturate and Stimulant Drugs, consisting of §§ 90-113.1 to 90-113.13, with present Article 5, the North Carolina Controlled Substances Act, consisting of §§ 90-86 to 90-113.8.

The provisions of former Articles 5 and 5A derived from Session Laws 1899, c. 1, s. 52; Rev., s. 3517; C. S., s. 4508; 1935, c. 477, ss. 1-23, 25, 26; 1953, c. 909, ss. 1-5; c. 1321; 1955, c. 278, ss. 1-4; c. 1330, ss. 1-6; 1957, c. 542; 1959, c. 1215, s. 1; 1961, c. 394, ss. 1,

2; 1965, c. 619, ss. 1-4; c. 620, ss. 1-5; 1967, c. 193, ss. 1-4; c. 194; c. 552, ss. 2-4; 1969, c. 541, s. 9; c. 970, ss. 1-10.

A new Article 5A, North Carolina Toxic Vapors Act, containing §§ 90-113.8A to 90-113.12, was enacted by Session Laws 1971, c. 1208, effective Jan. 1, 1972.

Session Laws 1971, c. 919, s. 3, contains a severability clause.

§ **90-87. Definitions.**—As used in this Article:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:

a. A practitioner (or, in his presence, by his authorized agent), or

b. The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

(3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.

(4) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor included in Schedules I through VI of this Article.

(5) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through VI of this Article.

(6) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports, or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(9) "Dispenser" means a practitioner who dispenses.

(10) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(11) "Distributor" means a person who distributes.

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

(13) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from use of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses

which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

(14) "Immediate precursor" means a substance which the North Carolina State Board of Health has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of a natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

b. By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale.

(16) "Marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under G.S. 90-88, the dextrorotatory isomer of 3-methoxy-n-methyl-

morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(20) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(22) "Practitioner" means:

a. A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(23) "Prescription" means:

a. A written order or other order which is promptly reduced to writing for a controlled substance as defined in this Article, or for a preparation, combination, or mixture thereof, issued by a practitioner who is licensed in this State to administer or prescribe drugs in the course of his professional practice; a prescription does not include an order entered in a chart or other medical record of a patient by a practitioner for the administration of a drug; or

b. A drug or preparation, or combination, or mixture thereof furnished pursuant to a prescription order.

(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(25) "Registrant" means a person registered by the North Carolina Drug Authority to manufacture, distribute, or dispense any controlled substance as required by this Article.

(26) "State" means the State of North Carolina.

(27) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use, or for the use of a member of his household, or for administration to an animal owned by him or by a member of his household. (1971, c. 919, s. 1.)

§ **90-88. Authority to control.**—(a) The North Carolina State Board of Health shall administer those portions of this Article having to do with the scheduling of controlled substances under this Article, and may add, delete, or reschedule substances within Schedules I through VI of this Article. On the petition of any interested party, or on its own motion, the North Carolina State Board of Health may add, delete, or reschedule a substance as a controlled substance within Schedules I through VI of this Article. In every case the North Carolina State Board of Health shall give notice of and hold a public hearing prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article. A petition by the North Carolina Drug Authority, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the North Carolina State Board of Health, as a matter of right. Notice

as required by this section shall consist of notice by one publication in three newspapers of statewide circulation qualified for legal advertising in accordance with G.S. 1-597 and 1-598. In addition, the North Carolina State Board of Health shall mail a notice of the proposed change and the date and place of the public hearing to each registrant under this Article. In making a determination regarding a substance, the North Carolina State Board of Health shall consider the following:

(1) The actual or relative potential for abuse;
(2) The scientific evidence of its pharmacological effect, if known;
(3) The state of current scientific knowledge regarding the substance;
(4) The history and current pattern of abuse;
(5) The scope, duration, and significance of abuse;
(6) The risk to the public health;
(7) The potential of the substance to produce psychic or physiological dependence liability; and
(8) Whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the required factors, the North Carolina State Board of Health shall make findings with respect thereto and shall issue an order adding, deleting or rescheduling the substance within Schedules I through VI of this Article.

(c) If the North Carolina State Board of Health designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the North Carolina State Board of Health shall similarly control, or cease control of, the substance under this Article after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance unless, within the 30-day period, the North Carolina State Board of Health objects to such inclusion. In such case, the North Carolina State Board of Health shall cause to be published and made public the reasons for such objection and shall afford all interested parties an opportunity to be heard. At the conclusion of such hearing, the North Carolina State Board of Health shall make public its decision, which shall be final unless specifically acted upon by the North Carolina General Assembly. Upon publication of objection to inclusion under this Article by the North Carolina State Board of Health, control under this section shall automatically be stayed until such time as the North Carolina State Board of Health makes public its decision.

(e) The North Carolina State Board of Health shall exclude any nonnarcotic substance from the provisions of this Article if such substance may, under the federal Food, Drug and Cosmetic Act, lawfully be sold over-the-counter without prescription.

(f) Authority to control under this Article does not include distilled spirits, wine, malt beverages, or tobacco. (1971, c. 919, s. 1.)

§ 90-89. Schedule I controlled substances.—This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina State Board of Health shall find: A high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetylmethadol.
4. Alphameprodine.
5. Alphamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Dextrorphan.
14. Diampromide.
15. Diethylthiambutene.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.
22. Etonitazene.
23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacylmorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidine.
38. Piritramide.
39. Proheptazine.
40. Properidine.
41. Racemoramide.
42. Trimeperidine.

(b) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Etorphine.
10. Heroin.
11. Hydromorphinol.

12. Methyldesorphine.
13. Methylhydromorphine.
14. Morphine methylbromide.
15. Morphine methylsulfonate.
16. Morphine-N-Oxide.
17. Myrophine.
18. Nicocodeine.
19. Nicomorphine.
20. Normorphine.
21. Pholcodine.
22. Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxy amphetamine.
2. 5-methoxy-3, 4-methylenedioxy amphetamine.
3. 3, 4, 5-trimethoxy amphetamine.
4. Bufotenine.
5. Diethyltryptamine.
6. Dimethyltryptamine.
7. 4-methyl-2, 5-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Mescaline.
11. Peyote.
12. N-ethyl-3-piperidyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn. (1971, c. 919, s. 1.)

§ **90-90. Schedule II controlled substances.**—This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina State Board of Health shall find: A high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
2. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical to any of the substances referred to in G.S. 90-90(a)1, but not including the isoquinoline alkaloids of opium.
3. Opium poppy and poppy straw.
4. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical to any of these substances, except that these substances shall not include decocainized coca leaves or extractions of coca leaves, which extracts do not contain cocaine or ecgonine.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
4. Dihydrocodeine.
5. Diphenoxylate.
6. Fentanyl.
7. Isomethadone.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.
11. Methadone.
12. Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
13. Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
14. Pethidine.
15. Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine.
16. Pethidine—Intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine — Intermediate — C, 1-methyl-4-phenylpiperdine-4-carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.

(c) Unless specifically exempted or listed in another schedule, any injectionable liquid which contains any quantity of methamphetamine, including its salts, isomers, or salts of isomers. (1971, c. 919, s. 1.)

§ **90-91. Schedule III controlled substances.**—This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina State Board of Health shall find: A potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
2. Phenmetrazine and its salts.
3. Any substance except injectionable liquid which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers.
4. Methylphenidate.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Glutethimide.

4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Phencyclidine.
8. Sulfondiethylmethane.
9. Sulfonethylmethane.
10. Sulfonmethane.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a

person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The North Carolina State Board of Health may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system. (1971, c. 919, s. 1.)

§ 90-92. Schedule IV controlled substances.—This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina State Board of Health shall find: A low potential for abuse relative to the substances listed in Schedule III of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule III of this Article. The following controlled substances are included in this schedule:

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances unless specifically exempted or listed in another schedule:

1. Barbital.
2. Chloral betaine.
3. Chloral hydrate.
4. Ethchlorvynol.
5. Ethinamate.
6. Meprobamate.
7. Methohexital.
8. Methylphenobarbital.
9. Paraldehyde.
10. Petrichloral.
11. Phenobarbital.

(b) The North Carolina State Board of Health may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active, nonnarcotic, medicinal ingredients not having a stimulant or depressant effect of [on] the central nervous system; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system. (1971, c. 919, s. 1.)

§ 90-93. Schedule V controlled substances.—This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina State Board of Health shall find: A low potential for abuse relative to the substances listed in Schedule IV of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule:

(a) Any compound, mixture, or preparation containing limited quantities of

any of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
2. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
3. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(b) A Schedule V substance may be dispensed at retail without a prescription only by a registered pharmacist and no other person, agent or employee may dispense a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding the provisions of G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of a Schedule V substance, may be completed by a nonpharmacist. A pharmacist may refuse to dispense a Schedule V substance until he is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. The name and address obtained from such identification shall be entered in the record of disposition to consumers. (1971, c. 919, s. 1.)

§ 90-94. Schedule VI controlled substances.—This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that such substance comes within this schedule, the North Carolina State Board of Health shall find: No currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physiological dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects.

The following controlled substances are included in this schedule:

1. Marihuana.
2. Tetrahydrocannabinols. (1971, c. 919, s. 1.)

§ 90-95. Violations, penalties.—(a) Except as authorized by this Article, it shall be unlawful for any person:

(1) To manufacture, distribute or dispense or possess with intent to distribute a controlled substance listed in any schedule of this Article;

(2) To create, distribute or possess with intent to distribute a counterfeit controlled substance included in any schedule of this Article;

(3) To possess a controlled substance included in any schedule of this Article.

(b) Any person who violates G.S. 90-95(a)(1) or G.S. 90-95(a)(2) shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars ($5,000), or both in the discretion of the court. In addition to any term of imprisonment, any sentence imposed may include a special probation term of not more than the difference

between the time required to be actively served and five years. Any person convicted of a second violation of G.S. 90-95(a)(1) or G.S. 90-95(a)(2) shall be sentenced to a term of not less than five years nor more than 10 years or fined not more than ten thousand dollars ($10,000) or both in the discretion of the court. Any person convicted of a third or subsequent violation of G.S. 90-95(a)-(1) or G.S. 90-95(a)(2) shall be sentenced to a term of not less than 15 years nor more than the term of his life or fined not more than fifteen thousand dollars ($15,000) or both in the discretion of the court.

(c) Any person who violates G.S. 90-95(a)(3) with respect to controlled substances included in Schedules I or II of this Article shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars ($5,000) or both in the discretion of the court. In addition to any term of imprisonment, any sentence imposed may include a special probation term of not more than the difference between the time required to be actively served and five years. Any person convicted of a second violation of G.S. 90-95(a)(3) with respect to controlled substances included in Schedules I or II of this Article shall be guilty of a felony and shall be sentenced to a term of not less than five years nor more than 10 years or fined not more than ten thousand dollars ($10,000), or both, in the discretion of the court. Any person convicted of a third or subsequent violation of G.S. 90-95(a)(3) with respect to controlled substances included in Schedules I or II of this Article shall be guilty of a felony and shall be sentenced to a term of not less than 15 years nor more than the term of his lifetime or fined not more than fifteen thousand dollars ($15,000), or both, in the discretion of the court.

(d) Any person who violates G.S. 90-95(a)(3) with respect to controlled substances included in Schedules III and IV of this Article shall, for the first offense, be guilty of a misdemeanor. In addition to any term of imprisonment, any sentence imposed may include a special probation term of not more than the difference between the time required to be actively served and two years. Any person convicted of a second violation with respect to controlled substances included in Schedules III and IV, of this Article, shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars ($5,000), or both, in the discretion of the court. Any person convicted of a third or subsequent violation of G.S. 90-95(a)-(3) with respect to controlled substances included in Schedules III and IV of this Article shall be guilty of a felony.

(e) Any person who violates G.S. 90-95(a)(3) with respect to controlled substances included in Schedules V and VI of this Article shall, for the first offense, be guilty of a misdemeanor and be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars ($500.00). Any person convicted of a second violation of G.S. 90-95(a)(3) with respect to controlled substances included in Schedules V and VI of this Article shall be guilty of a misdemeanor and be sentenced to a term of imprisonment of not more than two years, or fined, or by both in the discretion of the court. Any person convicted of a third or subsequent violation of G.S. 90-95(a)(3) with respect to controlled substances included in Schedules V and VI of this Article shall be guilty of a felony.

(f) Possession by any person of controlled substances included in any schedule of this Article in violation of G.S. 90-95(a)(3) shall be presumed to be possession of such substances for purposes of violating G.S. 90-95(a)(1) in the following cases:

(1) Possession of more than 25 tablets, capsules, or other dosage forms of any controlled substance included in Schedules III or IV of this Article;

(2) Possession of more than five fluid ounces of paregoric, U.S.P., as controlled within Schedule III of this Article;

(3) Possession of more than five grams of marijuana as controlled within Schedule VI of this Article from which the resin has not been extracted, or possession of more than one gram of the extracted resin thereof and every salt, compound, derivative, mixture or preparation of such resin, or possession of more than one one-hundredth gram of tetrahydrocannabinols.

(g) A special probation term imposed under this Article may include, but need not be limited to, requirements for rehabilitation treatment.

(h) A special probation term imposed under this Article may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall not be increased by the period of the special probation term and the resulting term of imprisonment shall not be diminished by the time which was spent on special probation. A person whose special probation term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment.

(i) Any person who is at least 18 years of age but not 21 years of age or older who violates this Article by distributing a substance included in Schedules I through VI of this Article to a person under 18 years of age who is at least three years younger than himself shall be punished by up to twice the maximum fine and term of imprisonment authorized. Any person who is 21 years of age or older who distributes a substance included in Schedules I through VI of this Article to any person less than 21 years of age shall be punished by a term of not less than 10 years nor more than life imprisonment and shall be fined not more than fifteen thousand dollars ($15,000) for the first and all subsequent violations of this Article. (1971, c. 919, s. 1.)

§ 90-95.1. Continuing criminal enterprise.—(a) Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than one hundred thousand dollars ($100,000), and to the forfeiture prescribed in subsection (b) of this section; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine of not more than two hundred thousand dollars ($200,000), and to the forfeiture described in subsection (b) of this section.

(b) Any person who is convicted under subsection (a) of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina:

(1) The profits obtained by him in such enterprise, and

(2) Any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(c) For purposes of this section, a person is engaged in a continuing criminal enterprise if:

(1) He violates any provision of this Article, the punishment of which is a felony; and

(2) Such violation is a part of a continuing series of violations of this Article;

a. Which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management; and

b. From which such person obtains substantial income or resources.

(d) In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. (1971, c. 919, s. 1.)

§ 90-96. Conditional discharge and expunction of records for first offense.—(a) Whenever any person who has not previously been convicted of any offense under this Article, or under any statute of the United States, or any state relating to controlled substances included in any schedule of this Article pleads guilty to or is found guilty of violating this Article by possessing a controlled substance included within Schedules III through VI of this Article, the court may without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Discharge and dismissal under this section may occur only once with respect to any person.

(b) Upon the dismissal of such person and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the North Carolina Department of Justice under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the North Carolina Department of Justice, the names of all persons convicted under this Article, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the North Carolina Department of Justice the names of those persons granted a conditional discharge under the provisions of this Article, and the North Carolina Department of Justice shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge. (1971, c. 919, s. 1.)

§ 90-97. Other penalties.—Any penalty imposed for violation of this Article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. If a violation of this Article is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this State. (1971, c. 919, s. 1.)

§ 90-98. Attempt and conspiracy; penalties.—Any person who attempts or conspires to commit any offense defined in this Article is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. (1971, c. 919, s. 1.)

§ **90-99. Republishing of schedules.** — The North Carolina Drug Authority shall update and republish the schedules established by this Article on a semiannual basis for two years from January 1, 1972, and thereafter on an annual basis. (1971, c. 919, s. 1.)

§ **90-100. Rules and regulations.**—The North Carolina Drug Authority is authorized to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this State. (1971, c. 919, s. 1.)

§ **90-101. Annual registration to manufacture, etc., controlled substances generally; effect of registration; exceptions; waiver; inspection.** —(a) Every person who manufactures, distributes, dispenses or conducts research with any controlled dangerous substance within this State or who proposes to engage in the manufacture, distribution, dispensing of, or the conduct of research with any controlled substance within this State, shall obtain annually a registration issued by the North Carolina Drug Authority in accordance with the rules and regulations promulgated by it.

(b) Persons registered by the North Carolina Drug Authority under this Article (including research facilities) to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of this Article:

(1) An agent, or an employee thereof, of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his business or employment;

(2) A common or contract carrier, or public warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner;

(4) Practitioners licensed in North Carolina by their respective licensing boards under Articles 1, 2, 4, 6, 11 and 12 of this Chapter.

(5) Any law-enforcement officer acting within the course and scope of official duties, or any person employed in an official capacity by, or acting as an agent of, any law-enforcement agency or other agency charged with enforcing the provisions of this Article when acting within the course and scope of official duties.

(d) The North Carolina Drug Authority, may, by regulation, waive the requirement for registration of certain classes of manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration shall be required at each principal place of business, research or professional practice where the registrant manufacturers, distributes, dispenses or uses controlled substances.

(f) The North Carolina Drug Authority is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by it. (1971, c. 919, s. 1.)

§ **90-102. Additional provisions as to registration.**—(a) The North Carolina Drug Authority shall register an applicant to manufacture or distribute controlled substances included in Schedules I through VI of this Article unless it determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of any controlled sub-

stances and any substance compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable federal, State and local law;

(3) Prior conviction record of applicant, its agents or employees under federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) Past experience in the manufacture of controlled substances, and the existence in the establishment or facility of effective controls against diversion; and

(5) Any factor relating to revocation, suspension, or denial of past registrations, licenses, or applications under this or any other State or federal law;

(6) Such other factors as may be relevant to and consistent with the public health and safety.

(b) Registration granted under subsection (a) of this section shall not entitle a registrant to manufacture and distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Practitioners, other than those exempted by G.S. 90-101(c)(4) must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this State. The North Carolina Drug Authority need not require separate registration under this Article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with Schedules I and VI substances may conduct research with Schedules I and VI substances within this State upon furnishing the North Carolina Drug Authority evidence of that federal registration.

(d) Manufacturers, distributors and research facilities registered or licensed under federal law to manufacture, distribute or do research on controlled substances included in Schedules I through VI of this Article shall be entitled to registration under this Article, but such registration is expressly made subject to the provisions of G.S. 90-103. Research facilities registered under federal law to conduct research with Schedules I and VI controlled substances may conduct research with Schedules I and VI controlled substances within this State upon furnishing the North Carolina Drug Authority evidence of that federal registration.

(e) The North Carolina Drug Authority shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any substances prior to January 1, 1972 and who are registered or licensed by the State. (1971, c. 919, s. 1.)

§ 90-103. Revocation or suspension of registration.—(a) A registration under G.S. 90-102 to manufacture, distribute, or dispense a controlled substance, may be suspended or revoked by the North Carolina Drug Authority upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this Article;

(2) Has been convicted of a felony under any State or federal law relating to any controlled substance; or

(3) Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(b) The North Carolina Drug Authority may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) Before denying, suspending, or revoking a registration or refusing a re-

newal of registration, the North Carolina Drug Authority shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the North Carolina Drug Authority at a time and place not less than 30 days after the date of service of the order, but in the case of a denial or renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with rules and regulations of the North Carolina Drug Authority required by Chapter 143, Article 18 of the General Statutes, and subject to judicial review as provided in Chapter 143, Article 33 of the General Statutes. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this Article or any law of the State.

(d) The North Carolina Drug Authority may suspend, without an order to show cause, any registration simultaneously with the institutions of proceedings under this section, or where renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the North Carolina Drug Authority, or dissolved by a court of competent jurisdiction.

(e) In the event the North Carolina Drug Authority suspends or revokes a registration granted under G.S. 90-102, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the North Carolina Drug Authority be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be ordered forfeited to the State.

(f) The Bureau shall promptly be notified of all orders suspending or revoking registration. (1971, c. 919, s. 1.)

§ **90-104. Records of registrants or practitioners.**—Each registrant or practitioner manufacturing, distributing, or dispensing controlled substances under this Article shall keep records and maintain inventories in conformance with the record keeping and the inventory requirements of the federal law and shall conform to such rules and regulations as may be promulgated by the North Carolina Drug Authority. (1971, c. 919, s. 1.)

§ **90-105. Order forms.**—Controlled substances included in Schedules I and II of this Article shall be distributed only by a registrant or practitioner, pursuant to an order form. Compliance with the provisions of the Federal Controlled Substances Act or its successor respecting order forms shall be deemed compliance with this section. (1971, c. 919, s. 1.)

§ **90-106. Prescriptions and labeling.**—(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedule II of this Article may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the North Carolina State Board of Health, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the dispening agent. Prescriptions shall be retained in conformity with the requirements of G.S. 90-104. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacist,

to an ultimate user, no controlled substance included in Schedules III or IV, except paregoric, U.S.P., as provided in G.S. 90-91(e)1, may be dispensed without a prescription, and oral prescriptions shall be promptly reduced to writing and filed with the dispensing agent. Such prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription.

(d) No controlled substance included in Schedule V of this Article or paregoric, U.S.P., may be distributed or dispensed other than for a medical purpose.

(e) No controlled substance included in Schedule VI of this Article may be distributed or dispensed other than for scientific or research purposes by persons registered under, or permitted by, this Article to engage in scientific or research projects.

(f) No controlled substance shall be dispensed or distributed in this State unless such substance shall be in a container clearly labeled in accord with regulations lawfully adopted and published by the federal government or the North Carolina Drug Authority.

(g) When a copy of a prescription for a controlled substance under this Article is given as required by G.S. 90-70, such copy shall be plainly marked: "Copy—for information only." Copies of prescriptions for controlled substances shall not be filled or refilled.

(h) A pharmacist dispensing a controlled substance under this Article shall enter the date of dispensing and shall write his own signature on the face of the prescription pursuant to which such controlled substance was dispensed. (1971, c. 919, s. 1.)

§ 90-107. Prescriptions, stocks, etc., open to inspection by officials.—Prescriptions, order forms and records, required by this Article, and stocks of controlled substances included in Schedules I through VI of this Article shall be open for inspection only to federal and State officers, whose duty it is to enforce the laws of this State or of the United States relating to controlled substances included in Schedules I through VI of this Article. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge other than to other law-enforcement officials or agencies, except in connection with a prosecution of proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (1971, c. 919, s. 1.)

§ 90-108. Prohibited acts; penalties.—(a) It shall be unlawful for any person:

(1) Other than practitioners licensed under Articles 1, 2, 4, 6, 11, 12 of this Chapter to represent to any registrant who manufactures, distributes, or dispenses a controlled substance under the provision of this Article that he is a licensed practitioner in order to secure or attempt to secure any controlled substance as defined in this Article or to in any way impersonate a practitioner for the purpose of securing or attempting to secure any drug requiring a prescription from a practitioner as listed above and who is licensed by this State.

(2) Who is subject to the requirements of G.S. 90-101 or a practitioner to distribute or dispense a controlled substance in violation of G.S. 90-105 or 90-106;

(3) Who is a registrant to manufacture, distribute, or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(4) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or its successor;

(5) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this Article;

(6) To refuse any entry into any premises or inspection authorized by this Article;

(7) To knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of this Article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this Article.

(8) Who is a registrant or a practitioner to distribute a controlled substance included in Schedule I or II of this Article in the course of his legitimate business, except pursuant to an order form as required by G.S. 90-105;

(9) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(10) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(11) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Article, or any record required to be kept by this Article;

(12) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance.

(b) Any person who violates this section shall be guilty of a misdemeanor. Provided, that if the violation is prosecuted by an information, indictment, or warrant which alleges that the violation was committed intentionally, and upon trial it is specifically found that the violation was committed intentionally, such violations shall be a felony punishable by imprisonment for not less than one year nor more than five years and a fine of not more than five thousand dollars ($5,000). (1971, c. 919, s. 1.)

§ **90-109. Nonprofessional treatment.**—(a) Any person other than a practitioner, who holds himself out to the public, or any part of it, as being a drug treatment facility, or as being able or available to treat, give shelter or comfort to, or who proposes to do any of the foregoing to or for any person using, under the influence of, or experiencing the effects of a controlled substance included in Schedules I through VI of this Article shall first be licensed by the North Carolina Drug Authority as a drug treatment facility.

(b) A license required by this section shall be obtained from the North Carolina Drug Authority and may be in the form of a letter from the North Carolina Drug Authority, signed by the Director of the North Carolina Drug Authority to the person applying for the license. A license as required by this section shall not be transferable, shall be prominently displayed at the place where treatment, shelter or comfort are afforded, and shall bear such reasonable restrictions, including duration, as the North Carolina Drug Authority may impose on it. A license application as required by this section need not be in any special form, but must disclose the essential plan of operation of the proposed drug treatment facility, the names and qualifications of all persons agreeing to provide professional medical services, paramedical or associated services, and the identity and qualifications of the supervisory and adult persons who will be available at the place of the proposed drug treatment facility.

(c) The North Carolina Drug Authority shall not issue a drug treatment

facility license to an applicant until it shall satisfy itself that professional and competent medical services are at all times available to the applicant at the drug treatment facility, that a responsible adult will be present or immediately available to the applicant at all times at the drug treatment facility, and that the applicant will make a positive contribution toward controlling drug dependence and assisting drug dependent persons. The North Carolina Drug Authority may deny license applications of proposed or existing drug treatment facilities if it finds there are reasonable grounds for belief that issuance of the license would be inconsistent with the safety of the public or with the application of law.

(d) A license granted under this section shall not in any way alter or reduce the liability of the licensee, its agents or employees, voluntary or compensated, with respect to any phase of its operations.

(e) Violation of this section shall be a misdemeanor. (1971, c. 919, s. 1.)

§ **90-109.1. Treatment.**—(a) A person may request treatment and rehabilitation for drug dependence from a practitioner, and such practitioner or employees thereof shall not disclose the name of such person to any law-enforcement officer or agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. A practitioner may undertake the treatment and rehabilitation of such person or refer such person to another practitioner for such purpose and under the same requirement of confidentiality.

(b) A person seeking treatment or rehabilitation for drug dependence shall first be examined and evaluated by a practitioner. Such practitioner shall prescribe a proper course of treatment and medication, if needed. The treating practitioner may further prescribe a course of treatment or rehabilitation and authorize another practitioner to provide the prescribed treatment or rehabilitation services.

(c) Every practitioner that provides treatment or rehabilitation services to a person dependent upon drugs, shall periodically as required by the Director of the North Carolina Drug Authority commencing January 1, 1972, make a statistical report to the Director of the North Carolina Drug Authority in such form and manner as the Director shall prescribe for each such person treated or to whom rehabilitation services were provided. The form of the report prescribed shall be furnished by the Director of the North Carolina Drug Authority. Such report shall include the number of persons treated or to whom rehabilitation services were provided; the county of such person's legal residence; the age of such person; the number of such persons treated as inpatients and the number treated as outpatients; the number treated who had received previous treatment or rehabilitation services; and any other data required by the Director. If treatment or rehabilitation services are provided to a person by a hospital, public agency, or drug treatment facility, such hospital, public agency, or drug treatment facility shall coordinate with the treating medical practitioner so that statistical reports required in this section shall not duplicate one another. The Director shall cause all such reports to be compiled into periodical reports which shall be a public record. (1971, c. 919, s. 1.)

§ **90-110. Injunctions.**—(a) The superior court of North Carolina shall have jurisdiction in proceedings in accordance with the rules of those courts to enjoin violations of this Article.

(b) In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the rules of the superior courts of North Carolina. (1971, c. 919, s. 1.)

§ **90-111. Cooperative arrangements.**—The North Carolina Drug Authority and the Attorney General of North Carolina shall cooperate with fed-

eral and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they are authorized to:

(1) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs on controlled substances for law enforcement at the local and State levels;

(3) Cooperate with the Bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the State, and make such information available for federal, State, and local law-enforcement purposes. Provided that neither the Attorney General of North Carolina, the North Carolina Drug Authority, nor any other State officer or agency shall be authorized to accept or file, or give out the names or other form of personal identification of drug dependent persons who voluntarily seek treatment or assistance related to their drug dependency. (1971, c. 919, s. 1.)

§ **90-112. Forfeitures.**—(a) The following shall be subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this Article;

(2) All raw material, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of the provisions of this Article;

(3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);

(4) All conveyances, including vehicles, vessels, or aircraft, which are used or intended for use to unlawfully conceal, convey, or transport, or in any manner to facilitate the unlawful concealment, conveyance, or transportation of property described in (1) or (2), except that

a. No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this Article unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this Article;

b. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission, committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

c. No conveyance shall be forfeited under the provisions of this section unless the violation is that encompassed in G.S. 90-95(a)(1) or 90-95(a)(2).

d. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of or consented to the act or omission.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this Article.

(b) Any property subject for [to] forfeiture under this Article may be seized by any law-enforcement officer upon process issued by any district or superior court having jurisdiction over the property except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this Article.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in custody of the law-enforcement agency seizing it, which may:

(1) Place the property under seal; or,
(2) Remove the property to a place designated by it; or,
(3) Request that the North Carolina Department of Justice take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Whenever property is forfeited under this Article, the law-enforcement agency having custody of it may:

(1) Retain the property for official use; or
(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expense of seizure, maintenance of custody, advertising, and court costs; or
(3) Transfer any conveyance including vehicles, vessels, or aircraft which are forfeited under the provisions of this Article to the North Carolina Department of Justice when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice, said conveyance may be of official use to the North Carolina Department of Justice;
(4) Upon determination by the director of any law-enforcement agency that a vehicle, vessel or aircraft transferred pursuant to the provisions of this Article is of no further use to said agency for use in official investigations, such vehicle, vessel or aircraft may be sold as surplus property in the same manner as other vehicles owned by the law-enforcement agency and the proceeds from such sale after deducting the cost of sale shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in the county in which said vehicle, vessel or aircraft was seized; provided, that any vehicle transferred to any law-enforcement agency under the provisions of this Article which has been modified to increase speed shall be used in the performance of official duties only and not for resale, transfer or disposition other than as junk.

(e) All substances included in Schedules I through VI that are possessed, transferred, sold, or offered for sale in violation of the provisions of this Article shall be deemed contraband and seized and summarily forfeited to the State. All substances included in Schedules I through VI of this Article which are seized or come into the possession of the State, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the State according to rules and regulations of the North Carolina Department of Justice.

All species of plants from which controlled substances included in Schedules I, II and VI of this Article may be derived, which have been planted or cultivated in violation of this Article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

The failure, upon demand by the Attorney General of North Carolina, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture. (1971, c. 919, s. 1.)

§ 90-113. Furnishing controlled substances to inmates of charitable, mental or penal institutions.—If any person shall sell or give to any inmate of any charitable, mental or penal institution any controlled substance included in Schedules I through VI of this Article, except under the general supervision of a practitioner, he shall be guilty of a felony, and, upon conviction thereof, punished as provided in G.S. 90-95; and if he be an officer or employee of any institution of the State, he shall be dismissed from his office. (1971, c. 919, s. 1.)

§ 90-113.1. Burden of proof; liabilities.—(a) It shall not be necessary for the State to negate any exemption or exception set forth in this Article in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Article, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Article, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

(c) No liability shall be imposed by virtue of this Article upon any duly authorized officer, engaged in the lawful enforcement of this Article. (1971, c. 919, s. 1.)

§ 90-113.2. Judicial review.—All final determinations, findings, and conclusions of the North Carolina Drug Authority or the North Carolina State Board of Health under this Article shall be final and conclusive decisions of the matters involved, except that any person aggrieved by such decision may obtain review of the decision as provided in Chapter 143, Article 33 of the General Statutes. Findings of fact by the North Carolina Drug Authority or the North Carolina State Board of Health, if supported by substantial evidence, shall be conclusive. (1971, c. 919, s. 1.)

§ 90-113.3. Education and research.—(a) The North Carolina Department of Public Instruction and the North Carolina State Board of Higher Education are authorized and directed to carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with such programs, they are authorized to:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances; and

(3) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them.

(b) The North Carolina Department of Public Instruction and the North Carolina Board of Higher Education or either of them may enter into contracts for educational activities related to controlled substances.

(c) The North Carolina Drug Authority is authorized and directed to encourage research on misuse and abuse of controlled substances. In connection with such research and in furtherance of the enforcement of this Article, it is authorized to:

(1) Establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse;

(2) Make studies and undertake programs of research to:

a. Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this Article;

b. Determine patterns of misuse and abuse of controlled substances and the social effect thereof; and

c. Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances.

(3) Enter into contracts with the North Carolina State Board of Health, with other public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(d) The North Carolina Drug Authority may enter into contracts for research activities related to controlled substances, and the North Carolina Department of Public Instruction and the North Carolina Board of Higher Education or either of them may enter into contracts for educational activities related to controlled substances, without performance bonds.

(e) The North Carolina Drug Authority may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any State civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

(f) The North Carolina Drug Authority may authorize persons engaged in research to possess and distribute controlled substances in accordance with such restrictions as the authorization may impose. Persons who obtain this authorization shall be exempt from State prosecution for possession and distribution of controlled substances to the extent authorized by the North Carolina Drug Authority. (1971, c. 919, s. 1.)

§ 90-113.4. Possession of hypodermic syringes and needles regulated.—(a) No person except a manufacturer or a wholesaler or agents or employees of such manufacturers or wholesalers or a retail dealer in surgical instruments, practitioner, or registered research facility, shall at any time have or possess a hypodermic syringe or needle or any instrument or implement adapted for the use of administering controlled substances injections and which is possessed for the purpose of administering controlled substances, unless such possession be authorized by the certificate of a physician issued within the period of one year prior thereto; provided, however, a nurse who is licensed by the North Carolina Board of Nursing and who is specifically authorized by a physician or dentist to give subcutaneous injections under the supervision or direction of such physician or dentist may possess hypodermic syringes or needles for the purpose of giving such injections.

(b) Violation of this section shall be a misdemeanor. (1971, c. 919, s. 1.)

§ 90-113.5. State Board of Pharmacy, North Carolina Department of Justice and peace officers to enforce Article.—It is hereby made the duty of the State Board of Pharmacy, its officers, agents, inspectors, and representatives, and all peace officers within the State, including agents of the North Carolina Department of Justice, and all State's attorneys, to enforce all provisions of this Article, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State, and of all other states, relating to controlled substances. The North Carolina Department of Justice is hereby authorized to make initial investigation of all violations of this Article, and is given original but not exclusive jurisdiction in respect thereto with all other law-enforcement officers of the State. (1971, c. 919, s. 1.)

§ 90-113.6. Payments and advances.—(a) The Attorney General is authorized to pay any person, from funds appropriated for the North Carolina De-

partment of Justice, for information concerning a violation of this Article, such sum or sums of money as he may find appropriate, without reference to any rewards to which such persons may otherwise be entitled by law.

(b) Moneys expended from appropriations of the North Carolina Department of Justice for the purchase of controlled substances or other substances proscribed by this Article which is subsequently recovered shall be reimbursed to the current appropriation for the Department.

(c) The Attorney General is authorized to direct the advance of funds by the State Treasurer in connection with the enforcement of this Article. (1971, c. 919, s. 1.)

§ **90-113.7. Pending proceedings.**—(a) Prosecutions for any violation of law occurring prior to January 1, 1972 shall not be affected by these repealers, or amendments, or abated by reason, thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to January 1, 1972 shall not be affected by these repealers, or amendments, or abated by reason, thereof.

(c) All administrative proceedings pending on January 1, 1972 shall be continued and brought to final determination in accord with laws and regulations in effect prior to January 1, 1972. Such drugs placed under control prior to January 1, 1972 which are not included within Schedules I through VI of this Article shall automatically be controlled and listed in the appropriate schedule.

(d) The provisions of this Article shall be applicable to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings, and investigations which occur following January 1, 1972. (1971, c. 919, s. 1.)

§ **90-113.8. Continuation of regulations.**—Any orders, rules, and regulations which have been promulgated under any law affected by this act [c. 919 of the 1971 Session Laws] and which are in effect on the day preceding January 1, 1972 shall continue in effect until modified, superseded, or repealed by proper authority. (1971, c. 919, s. 2.)

ARTICLE 5A.

North Carolina Toxic Vapors Act.

§ **90-113.8A. Title.**—This Article shall be known and may be cited as the "North Carolina Toxic Vapors Act." (1971, c. 1208, s. 1.)

Editor's Note. — Session Laws 1971, c. 1208, s. 2, makes the act effective on Jan. 1, 1972.

Revision of Articles 5 and 5A. — See same catchline in note under § 90-86.

§ **90-113.9. Inhaling fumes for purpose of causing intoxication, etc.**—No person shall, for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain, or nervous system, intentionally smell or inhale the fumes from any substance having the property of releasing toxic vapors or fumes; provided, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes. (1971, c. 1208, s. 1.)

§ **90-113.10. Use or possession of substances.**—No person shall, for the purpose of violating G.S. 90-113.9, use or possess for the purpose of so using any substance having the property of releasing toxic vapors or fumes. (1971, c. 1208, s. 1.)

§ **90-113.11. Sale, etc., of substances.**—No person shall sell, or offer to sell, to any other person any substances having the property of releasing toxic vapors or fumes, if he has reasonable cause to suspect that the product sold, or

offered for sale, will be used for the purpose set forth in G.S. 90-113.9. (1971, c. 1208, s. 1.)

§ 90-113.12. Violation a misdemeanor.—Violation of this Article shall be a misdemeanor. (1971, c. 1208, s. 1.)

§ 90-113.13: Repealed by Session Laws 1971, c. 919, s. 1, effective January 1, 1972.

Cross Reference. — Provisions identical to former § 90-113.13 now appear in § 14-258.1.

§ 90-113.14. Conditional discharge and expunction of records for first offenses.—(a) Whenever any person who has not previously been convicted of any offense under Article 5 or 5A of Chapter 90, or under any statute of the United States, or any state relating to those substances included in Article 5 or 5A of Chapter 90 pleads guilty to or is found guilty of violating Article 5 or 5A by possessing cannabis as prohibited thereunder, the court may without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of such Articles. Discharge and dismissal under this section may occur only once with respect to any person.

(b) Upon the dismissal of such person and discharge of the proceedings against him under subsection (a) of this subsection [section], such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the North Carolina Department of Justice under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the North Carolina Department of Justice, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the North Carolina Department of Justice the names of those persons granted a conditional discharge under the provisions of this Article, and the North Carolina Department of Justice shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge. (1971, c. 1078.)

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.

§ 90-123. Annual fees; failure to pay; revocation of license; collection by suit.—For the use of the Board in performing its duties under this article, every registered optometrist shall, in every year after the year 1969 pay to the Board of Examiners the sum of not exceeding fifty dollars ($50.00), the amount to be fixed by the Board, as a license fee for the year. Such payments shall be made prior to the first day of April in each year, and in case of default in payment by any registered optometrist his certificate may be revoked by the Board at the next regular meeting of the Board after notice as herein provided. But no license shall be revoked for nonpayment if the person so notified shall pay, before or at the time of consideration, his fee and such penalty as may be imposed by the Board. The penalty imposed on any one person so notified as a condition of allowing his license to stand shall not exceed ten and no/100 dollars ($10.00). The Board of Examiners may collect any dues or fees provided for in this section by suit in the name of the Board. The notice hereinbefore mentioned shall be in writing, addressed to the person in default in the payment of dues or fees herein mentioned at his last known address as shown by the records of the Board, and shall be sent by the secretary of the Board by registered mail, with proper postage attached, at least twenty (20) days before the date upon which revocation of license is considered, and the secretary shall keep a record of the fact and of the date of such mailing. The notice herein provided for shall state the time and place of consideration of revocation of the license of the person to whom such notice is addressed. (1909, c. 444, s. 12; C. S., s. 6696; 1923, c. 42, s. 5; 1933, c. 492; 1937, c. 362, s. 1; 1959, c. 477; 1969, c. 624.)

Editor's Note.—The 1969 amendment substituted "1969" for "1959" and "fifty dollars ($50.00)" for "twenty-five dollars ($25.00)" near the beginning of the section.

§ 90-123.1. Continuing education courses required.—All registered optometrists now or hereafter licensed in the State of North Carolina are and shall be required to take annual courses of study in subjects relating to the practice of the profession of optometry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive care to the public. The length of study shall be prescribed by the Board but shall not exceed twenty-five (25) hours in any calendar year. Attendance must be at a course or courses approved by the Board. Attendance at any course or courses of study are to be certified to the Board upon a form provided by the Board and shall be submitted by each registered optometrist at the time he makes application to the Board for the renewal of his license and payment of his renewal fee. The Board is authorized to use up to one half of its annual renewal fees for the purposes of contracting with institutions of higher learning, professional organizations, or qualified individuals for the providing of educational programs that meet this requirement. The Board is further authorized to treat funds set aside for the purpose of continuing education as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education. In no instance may the Board require a greater number of hours of study than are available at approved courses held within the State, and shall be allowed to waive this requirement in cases of certified illness or undue hardship. (1969, c. 354.)

Editor's Note.—This section is effective Jan. 1, 1970.

§ 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).

§ 90-125. Practicing under other than own name or as a salaried or commissioned employee.—Except as provided for in chapter 55B of the General Statutes of North Carolina, it shall be unlawful for any person licensed to practice optometry under the provisions of this article to advertise, practice, or attempt to practice under a name other than his own, except as an associate of or assistant to an optometrist licensed under the laws of the State of North Carolina; and it shall be likewise unlawful for any corporation, lay body, organization, group, or lay individuals to engage, or undertake to engage, in the practice of optometry through means of engaging the services, upon a salary or commission basis, of one licensed to practice optometry or medicine in any of its branches in this State. Likewise, it shall be unlawful for any optometrist licensed under the provisions of this article to undertake to engage in the practice of optometry as a salaried or commissioned employee of any corporation, lay body, organization, group, or lay individual. (1935, c. 63; 1937, c. 362, s. 2; 1969, c. 718, s. 16.)

Editor's Note.—

The 1969 amendment, effective Jan. 1, 1970, added at the beginning of the section "Except as provided for in chapter 55B of the General Statutes of North Carolina."

§ 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.

§ 90-155. Annual fee for renewal of license.—Any person practicing chiropractic in this State, in order to renew his license, shall, on or before the first Tuesday after the first Monday in January in each year after a license is issued to him as herein provided, pay to the secretary of the Board of Chiropractic Examiners a renewal license fee of twenty-five dollars ($25.00), and shall furnish the Board evidence that he has attended two days of educational sessions or programs approved by the Board during the preceding 12 months, provided the Board may waive this educational requirement due to sickness or other hardship of applicant.

Any license or certificate granted by the Board under this Article shall automatically be cancelled if the holder thereof fails to secure a renewal within 30 days from the time herein provided; but any license thus cancelled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of twenty-five dollars ($25.00). (1917, c. 73, s. 15; C. S., s. 6726; 1933, c. 442, s. 4; 1937, c. 293, s. 2; 1963, c. 646, s. 4; 1971, c. 715.)

Editor's Note.—

The 1971 amendment increased the fee in the first paragraph from $10.00 to $25.00 and the fee in the second paragraph from $15.00 to $25.00.

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 alter-

ations 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. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. 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; 1969, c. 844, s. 3.)

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.

The 1969 amendment added the fifth sentence of the first paragraph of subsection (c).

§ **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	$30.00
Application for certificate and license as registered nurse by endorsement	30.00
Application for each reexamination leading to certificate and license as registered nurse	30.00

Renewal of license to practice as registered nurse (2-year period) 15.00
Reinstatement of lapsed license to practice as a registered nurse and renewal fee 30.00
Application for examination leading to certificate and license as licensed practical nurse by examination 30.00
Application for certificate and license as licensed practical nurse by endorsement 30.00
Application for each reexamination leading to certificate and license as licensed practical nurse 30.00
Renewal of license to practice as a licensed practical nurse (2-year period) 15.00
Reinstatement of lapsed license to practice as a licensed practical nurse and renewal fee 30.00
Reasonable charge 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; 1971, c. 534.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, rewrote the schedule in subsection (b), increasing all fees.

§ 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.)

§ 90-167.1. Education credits for practical nurse candidates.—Upon application by a licensed practical nurse for admission to a diploma school of nursing in this State, the education, training and experience of such nurse shall be evaluated by the school for purposes of determining what credits should be accorded with respect thereto in the diploma school, and reasonable credit shall be accorded therefor. Such evaluation may include proficiency examinations in various areas of knowledge and experience. The credit accorded pursuant to this section shall not exceed a total of nine months. (1969, c. 518.)

§ 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 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.)

§ 90-171.6A. Baccalaureate in nursing candidate credits. — Every graduate of a diploma school of nursing in this State who has passed the registered nurse examination shall, upon admission to any state-supported institution of higher learning offering baccalaureate education in nursing, be granted credit for previous experience in the diploma school of nursing on an individual basis by the utilization of the most effective method of evaluation to the end that the applicant shall receive optimum credit and that upon graduation the applicant will have earned the baccalaureate degree in nursing. (1969, c. 547, 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. The general hospital shall not be required to have any specific number of beds for patients.
(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; 1969, c. 1079.)

Editor's Note. — The 1969 amendment added the second sentence of subdivision (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 it shall place the educational unit in nursing on the accredited list and notify the is meeting the requirements and standards prescribed by this article and the Board, 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.

§ 90-171.17. Eligibility to instruct registered nurse candidates. — Notwithstanding any other provision of law or any rule or regulation of the North Carolina Board of Nursing, where an instructor is otherwise unavailable, any registered nurse who is a graduate of a diploma school of nursing and who has been teaching nurses for five years or more and who is otherwise qualified shall be entitled to be an instructor on the floors of an educational unit in nursing and shall also be entitled to be an assistant instructor in the classrooms of an educational unit in nursing; provided that the North Carolina Board of Nursing may require such instructors to attend annual nursing workshops. On occasions when sickness or leave of absence of a B.S. degree nurse makes it impossible for her to teach, the R.N. nurse can act as classroom instructor. For the purposes of this section, "unavailable" shall mean that an educational unit in nursing has been unable, after a bona fide continuing effort, to employ sufficient registered nurses with B.S. or M.S. degrees to act as instructors on all floors and in all classrooms of the unit at all times when persons are studying nursing and taking training to be registered nurses. (1969, c. 524.)

§ 90-171.18. Course credits certified to another state.—Upon the written request of a graduate of a diploma school of nursing in this State or a person who has received a baccalaureate degree in nursing from some institution in this State, the North Carolina Board of Nursing shall certify such person's credits with respect to the study of nursing to the appropriate board of any other state of the United States which licenses nurses. (1969, c. 942.)

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.

§ 90-187. Unauthorized practice; penalty.

Quoted in State v. Stafford, 11 N.C. App. 520, 181 S.E.2d 741 (1971).

ARTICLE 12.

Podiatrists.

§ 90-188. Podiatry defined.—Podiatry as defined by this Article is the surgical or medical or mechanical treatment of all ailments of the human foot, except the amputation of the foot or toes or the administration of an anesthetic other than local and except the correction of clubfoot deformity and triple arthrodesis. (1919, c. 78, s. 2; C. S., s. 6763; 1945, c. 126; 1963, c. 1195, s. 2; 1971, c. 1211.)

Editor's Note.—

Session Laws 1967, c. 1217, s. 1, effective July 1, 1967, changed the title of this article from "Chiropodists" to "Podiatrists."

The 1971 amendment deleted "correction of deformities requiring the use of the knife" preceding "amputation," substituted "administration" for "use," and added "and except the correction of clubfoot deformity and triple arthrodesis."

§ 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; term; 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. Dur-

ing 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 elec-

tions 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.

§ 90-205. Oath of members.—The Board shall furnish each person elected to serve on the Board a certificate of appointment, except the president of the State Board of Health. The persons elected to the Board shall qualify by taking and subscribing to the usual oath of office, to perform faithfully their duties, before some person authorized to administer oaths, on the day of the annual meeting of the Board, which oath shall be filed with the Board. (1901, c. 338, ss. 3, 4; Rev., s. 4385; C. S., s. 6778; 1945, c. 98, s. 2; 1949, c. 951, s. 2; 1957, c. 1240, s. 2; 1969, c. 584, s. 1.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, rewrote this section.

§ 90-207. Meetings; quorum; bylaws; officers; president to administer oaths.—The Board shall meet at least once every year, during the month of January, at such place as it may determine. Four members shall constitute a quorum. At each annual meeting the Board from its members shall select a president and a secretary, who shall hold their offices for one year, and until their successors are elected. The Board shall, from time to time, adopt rules, regulations, and bylaws not inconsistent with the laws of this State or the United States, whereby the performance of the duties of such Board and the practice of embalming of dead human bodies shall be regulated. The Board shall also enforce such rules and regulations relative to sanitation, health and the protection of the public from contagious and infectious diseases as are promulgated by the State Board of Health with respect to the handling of dead human bodies. The president of the Board (and in his absence a president pro tempore elected by the members present) is authorized to administer oaths to witnesses testifying before the Board. (1901, c. 338, ss. 5, 6, 7, 8; Rev., s. 4387; C. S., s. 6780; 1949, c. 951, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, substituted "January" for "July" in the first sentence.

§ 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 six-

teen 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.

§ 90-210.10. Grant of license to funeral directors. — No person shall engage in the practice of funeral directing without first obtaining the license herein provided. No person shall be issued a license as a funeral director unless he is at least twenty-one years of age; a resident of North Carolina, a citizen of the United States, of good moral character, as evidenced by at least two affidavits to

that effect, possessed of a high school education of not less than sixteen Carnegie units or the equivalent thereof, such equivalence to be determined by the Board in its discretion; has completed a minimum of twelve months of service as an apprentice under the supervision of a licensed and practicing funeral director, who shall make affidavit that the applicant for a license has had such experience under him; and has passed to the satisfaction of the Board an examination as prescribed by the Board, of his qualifications and skill as a funeral director. Provided, however, in computing the apprenticeship service required by this section the Board shall give full credit for time served in other jurisdictions, either as an apprentice funeral director or as a licensed and practicing funeral director, if in the opinion of the Board such apprenticeship or practice is equivalent to the funeral directors apprenticeship otherwise required by this article.

Every person having the above qualifications may make application to be licensed as a funeral director to the Board on blank applications furnished by the Board accompanied by a fee of fifteen dollars ($15.00), whereupon the applicant shall present himself before the Board at a time and place to be fixed by the Board and if the Board shall find upon due examination that the applicant meets the requirements outlined above and makes an average of seventy-five percent (75%) on his examination, such applicant shall be issued a license to practice funeral directing. (1957, c. 1240, s. 2; 1969, c. 584, ss. 3, 3a.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, inserted, in the second sentence of the first paragraph, "has completed a minimum of twelve months of service as an apprentice under the supervision of a licensed and practicing funeral director, who shall make affidavit that the applicant for a license has had such experience under him." The amendment also added the proviso at the end of the first paragraph.

§ 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.

§ 90-210.13A. Apprentices.—(a) Each apprentice in funeral directing, upon commencing his apprenticeship as a funeral director, shall register as an apprentice with the secretary and pay such fee as may be fixed by the Board. He shall notify the Board immediately upon completion of his apprenticeship and as evidence thereof submit to the Board a sworn affidavit to that effect, signed by the licensed funeral director under whom such apprenticeship was served or in case of his death, arbitrary refusal, or incapacity, then by some reputable person having knowledge of the facts.

(b) Whenever any person applying for a license under this article as a funeral director has served the whole or any part of the apprenticeship of practical experience required by this article, and his apprenticeship has been interrupted by service in any branch of the armed services of the United States, then in all such cases, the applicant shall be given credit for the time served in such apprenticeship as fully in all respects as if such service in the armed forces had not caused

an interruption in the period of practical experience required under this section. (1969, c. 584, s. 4.)

Editor's Note.—Session Laws 1969, c. 584, s. 6, makes the act effective July 1, 1969.

§ **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.

§ 90-211. Board for distribution.—The North Carolina Board of Anatomy shall consist of four members, one each from the University of North Carolina School of Medicine, the Duke University School of Medicine, the Bowman Gray School of Medicine of Wake Forest University, and the East Carolina University School of Medicine appointed by the deans of the respective medical schools. This Board shall be charged with the distribution of dead human bodies for the purpose of promoting the study of anatomy in this State, and shall have power to make proper rules for its government and the discharge of its functions under this Article. (1903, c. 666, s. 1; Rev., s. 4287; C. S., s. 6785; 1943, c. 100; 1971, c. 1127.)

Editor's Note.—

The 1971 amendment, in the first sentence, substituted "four" for "three," and substituted "the Bowman Gray School of Medicine of Wake Forest University, and the East Carolina University School of Medicine" for "and the Bowman Gray School of Medicine of Wake Forest College."

State Government Reorganization.—The Board of Anatomy was transferred to the Department of Human Resources by § 143A-157, enacted by Session Laws 1971, c. 864.

§ 90-212. What bodies to be furnished.—All officers, agents or servants of the State of North Carolina, or of any county or town in said State, and all undertakers doing business within the State, having charge or control of a dead body required to be buried at public expense, or at the expense of any institution supported by State, county or town funds, shall be and hereby are required immediately to notify, and, upon the request of said Board or its authorized agent or agents, without fee or reward, deliver, at the end of a period not to exceed thirty-six hours after death, such body into the custody of the Board, and permit the Board or its agent or agents to take and remove all such bodies or otherwise dispose of them: Provided, that such body be not claimed within thirty-six hours after death to be disposed of without expense to the State, county or town, by any relative within the second degree of consanguinity, or by the husband or wife of such deceased person: Provided, further, that the thirty-six hour limit may be prolonged in cases within the jurisdiction of the coroner where retention for a longer time may be necessary: Provided, further, that the bodies of all such prisoners dying while in Central Prison or road camps of Wake County, whether death results from natural causes or otherwise, shall be equally distributed among the funeral homes in Raleigh; but only such funeral homes can qualify hereunder as at all times maintain a regular licensed embalmer: Provided, further, that nothing herein shall require the delivery of bodies of such prisoners to funeral directors of Wake County where the same are claimed by relatives or friends.

Whenever the dead body is that of an inmate of any State hospital, the State School for the Deaf, the State School for the Deaf, Dumb and Blind, or of any traveler or stranger, it may be embalmed and delivered to the North Carolina Board of Anatomy, but it shall be surrendered to the husband or wife of the deceased person or any other person within the second degree of consanguinity upon demand at any time within ten days after death upon the payment to said Board of the actual cost to it of embalming and preserving the body. (1903, c. 666, s. 2; Rev., s. 4288; 1911, c. 188; C. S., s. 6786; 1923, c. 110; 1937, c. 351; 1943, c. 100; 1969, c. 1279.)

Editor's Note.—

The 1969 amendment deleted the word "white" preceding "prisoners" and "funeral homes" in the third proviso and also deleted in that proviso a provision requiring distribution of the bodies of negro prisoners to negro funeral homes.

§ 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 G.S. 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; Postmortem 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 14A.

Bequest of Body or Part Thereof.

§§ 90-216.1 to 90-216.5: Repealed by Session Laws 1969, c. 84, s. 2, effective October 1, 1969.

Cross Reference. — As to Uniform Anatomical Gift Act, see §§ 90-220.1 to 90-220.9.

Article 15.

Autopsies.

§ 90-217. Limitation on right to perform autopsy.—The right to perform an autopsy shall be limited to those cases in which:

(1) The Chief Medical Examiner or the medical examiner of a county, acting pursuant to G.S. 130-200, directs that an autopsy be performed;

(2) A prosecuting officer or solicitor acting pursuant to G.S. 15-7 in case of homicide, directs that an autopsy be performed;

(3) The decedent directs in writing that an autopsy be performed in connection with his death;

(4) The personal representative of the estate of the decedent requests that an autopsy be performed upon the decedent; or

(5) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual opposition by a member of the same or prior class, authorizes an autopsy to be performed:

a. The spouse,

b. Any adult son, adult daughter or adult stepson or adult stepdaughter,

c. Any parent or stepparent, including the mother of an illegitimate child decedent,

d. Any adult brother, adult sister, or adult half brother or adult half sister,

e. Any other relative or person who accepts responsibility for burial or final disposition of the body by other customary and lawful procedures,

f. Any other person charged by law with the duty of burial or final disposition of the body by other customary and lawful pro-

cedures. (1931, c. 152; 1933, c. 209; 1967, c. 1154, s. 4; 1969, c. 444.)

Cross References.—
As to postmortem medicolegal examinations, see §§ 130-192 to 130-202.2.

Editor's Note.—
The 1969 amendment, effective Oct. 1, 1969, rewrote this section as previously amended in 1967.

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).

"Adult" Is Person 18 or Older. — See opinion of Attorney General to Lena S. Davis, 41 N.C.A.G. 489 (1971).

ARTICLE 15A.

Uniform Anatomical Gift Act.

§ **90-220.1. Definitions.**—As used in this Article:

(1) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage or distribution of human bodies or parts thereof.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Donor" means an individual who makes a gift of all or part of his body.

(4) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state and a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(6) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(7) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice medicine under the laws of any state.

(8) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

(9) "Certified Embalmer" means an embalmer holding a valid license to practice in North Carolina who has completed a course in eye enucleation and has been certified as competent to enucleate eyes by an accredited school of medicine operating within the State of North Carolina. (1969, c. 84, s. 1; 1971, c. 873, s. 1.)

Editor's Note.—Session Laws 1969, c. 84, adding this Article, is effective Oct. 1, 1969. The 1971 amendment, effective Oct. 1, 1971, added subdivision (9).

§ **90-220.2. Persons who may execute an anatomical gift.**—(a) Any individual of sound mind and 18 years of age or more may give all or any part of

his body for any purpose specified in G.S. 90-220.3, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in G.S. 90-220.3:

(1) The spouse,
(2) An adult son or daughter,
(3) Either parent,
(4) An adult brother or sister,
(5) A guardian of the person of the decedent at the time of his death,
(6) Any other person authorized or under obligation to dispose of the body.

The persons authorized by this subsection may make the gift after or immediately before death.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by G.S. 90-220.7 (d). (1969, c. 84, s. 1.)

"Adult" Is Person 18 or Older. — See opinion of Attorney General to Lena S. Davis, 41 N.C.A.G. 489 (1971).

§ 90-220.3. Persons who may become donees; purposes for which anatomical gifts may be made.—The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or
(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy; or
(3) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or
(4) Any specified individual for therapy or transplantation needed by him. (1969, c. 84, s. 1.)

§ 90-220.4. Manner of executing anatomical gifts.—(a) A gift of all or part of the body under G.S. 90-220.2(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective. (b) A gift of all or part of the body under G.S. 90-220.2(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence and the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at

the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee.

(d) The donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures, subject to the provisions of G.S. 90-220.7(b). In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose. In respect to a gift of an eye, a certified embalmer, as defined in G.S. 90-220.1, may enucleate eyes for such gift after proper certification of death by a physician and compliance with the intent of such gift as defined within this chapter.

The enucleation of the eyes by a certified embalmer may be performed when permission has been granted by the next of kin.

(e) Any gift by a person designated in G.S. 90-220.2(b) shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message. (1969, c. 84, s. 1; 1971, c. 873, s. 2.)

Editor's Note.—The 1971 amendment, effective Oct. 1, 1971, added the last sentence of the first paragraph and added the second paragraph of subsection (d).

§ 90-220.5. Delivery of document of gift.—If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee at any time to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination. (1969, c. 84, s. 1.)

§ 90-220.6. Amendment or revocation of the gift.—(a) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) The execution and delivery to the donee of a signed statement, or

(2) An oral statement made in the presence of two persons and communicated to the donee, or

(3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(4) A signed card or document found on his person or in his effects, and made known to the donee.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a). (1969, c. 84, s. 1.)

§ 90-220.7. Rights and duties at death.—(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he shall, subject to the terms of the gift, authorize embalming and the use of the body in funeral services, upon request of the surviving spouse or other person listed in the order stated in G.S. 90-220.2 (b). If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall, within 24 hours, cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. Such physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts with due care in accord with the terms of this article or the anatomical gift laws of another state is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this article are subject to the laws of this State prescribing powers and duties with respect to autopsies. (1969, c. 84, s. 1.)

§ **90-220.8. Uniformity of interpretation.**—This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1969, c. 84, s. 1.)

§ **90-220.9. Short title.**—This article may be cited as the Uniform Anatomical Gift Act. (1969, c. 84, s. 1.)

§ **90-220.10. Use of tissue declared service; standard of care; burden of proof.**—The procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes, the rendition of a service by every person or institution participating therein and, whether or not any remuneration is paid therefor, is declared not to be a sale of such whole blood, plasma, blood products, blood derivatives or other human tissues, for any purpose. No person or institution shall be liable in warranty, express or implied, for the procurement, processing, distribution or use of said items but nothing herein shall alter or restrict the liability of such person or institution in negligence or tort in consequence of said service. (1971, c. 836.)

§ **90-220.11. Giving of blood by persons 18 years of age or more.**—Any person who is 18 years of age or more may give or otherwise donate his blood to any individual, hospital, blood bank or blood collection center without the consent of the parent or parents or guardian of such donor. (1971, c. 10; c. 1093, s. 16.)

Editor's Note. — The 1971 amendment substituted "person" for "individual" near the beginning of the section and substituted "donor" for "individual" at the end of the section.

Article 15B.

Blood Banks.

§ **90-220.12. Supervision of licensed physician required; penalty for violation.**—It shall be unlawful for any person, firm or corporation to engage in the selection of blood donors or in the collection, storage, processing, or transfusion of human blood, except at the direction or under the supervision of a physician licensed to practice medicine in North Carolina. Any person, firm or corporation convicted of the violation of this section shall be guilty of a misdemeanor. (1971, c. 938.)

§ **90-220.13. Selection of donors; due care required.**—In the selection of donors due care shall be exercised to minimize the risks of transmission of agents that may cause hepatitis or other diseases. (1971, c. 938.)

§ **90-220.14. Inapplicability.**—Nothing in this Article shall be construed to affect the provisions of G.S. 20-16.2 and G.S. 20-139.1. (1971, c. 938.)

Article 16.

Dental Hygiene Act.

§ **90-221. Definitions.**—(a) "Dental hygiene" as used in this Article shall mean the performance of the following functions: Complete oral prophylaxis,

application of preventive agents to oral structures, exposure and processing of radiographs, administration of medicaments prescribed by a licensed dentist, preparation of diagnostic aids, and written records of oral conditions for interpretation by the dentist, together with such other and further functions as may be permitted by rules and regulations of the Board not inconsistent herewith.

(b) "Dental hygienist" as used in this Article, shall mean any person who is a graduate of a Board-accredited school of dental hygiene, who has been licensed by the Board, and who practices dental hygiene as prescribed by the Board.

(1971, c. 756, s. 1.)

Editor's Note. — The 1971 amendment rewrote subsections (a) and (b). As the rest of the section was not changed by the amendment, only subsections (a) and (b) are set out.

§ **90-223. Power and duties of Board.**—(a) The Board is authorized and empowered to:

(1) Conduct examinations for licensure,
(2) Issue licenses and provisional licenses,
(3) Issue annual renewal certificates, and
(4) Renew expired licenses.

(b) The Board shall have the authority to make or amend rules and regulations not inconsistent with this Article governing the practice of dental hygiene and the granting, revocation and suspension of licenses and provisional licenses of dental hygienists.

(1) The accepted rule change must be (i) filed with the appropriate state agency, the Secretary of State and (ii) a copy distributed to the licensed dentists and dental hygienists within 30 days of final approval by the Board.

(2) The Board shall issue every two years a compilation or supplement of the Dental Hygiene Act and the Board rules and regulations, and, upon written request therefor, a directory of dental hygienists to each licensed dentist and dental hygienist.

(c) The Board shall keep on file in its office at all times a complete record of the names, addresses, license numbers and renewal certificate numbers of all persons entitled to practice dental hygiene in this State. (1945, c. 639, s. 3; 1971, c. 756, s. 2.)

Editor's Note. — The 1971 amendment rewrote the former first paragraph of the section as present subsections (a) and (b) and designated the former second paragraph of the section as subsection (c).

§ **90-224. Examination.**—(a) The applicant for licensure must be of good moral character, have graduated from an accredited high school or hold a high school equivalency certificate duly issued by a governmental agency or unit authorized to issue the same, and be a graduate of a program of dental hygiene in a school or college approved by the Board.

(b) The Board shall have the authority to establish in its rules and regulations:

(1) The form of application;
(2) The time and place of examination;
(3) The type of examination;
(4) The qualifications for passing the examination. (1945, c. 639, s. 4; 1971, c. 756, s. 3.)

Editor's Note. — The 1971 amendment rewrote the former provisions of this section as subsection (a) and added subsection (b).

§ **90-225. License issue and display.**—(a) The Board shall issue licenses to examinees who pass the Board's examination.

(b) The Board shall determine:

(1) The method and time of notifying successful candidates.

(2) The time and form for issuing licenses, and

(3) The place license must be displayed. (1945, c. 639, s. 5; 1971, c. 756, s. 4.)

Editor's Note. — The 1971 amendment rewrote this section.

§ 90-226. Provisional license.—(a) The North Carolina State Board of Dental Examiners shall, subject to its rules and regulations, issue a provisional license to practice dental hygiene to any person who is licensed to practice dental hygiene anywhere in the United States, or in any country, territory or other recognized jurisdiction, if the Board shall determine that said licensing jurisdiction imposed upon said person requirements for licensure no less exacting than those imposed by this State. A provisional licensee may engage in the practice of dental hygiene only in strict accordance with the terms, conditions and limitations of her license and with the rules and regulations of the Board pertaining to provisional license.

(b) A provisional license shall be valid until the date of the announcement of the results of the next succeeding Board examination of candidates for licensure to practice dental hygiene in this State, unless the same shall be earlier revoked or suspended by the Board.

(c) No person who has failed an examination conducted by the North Carolina State Board of Dental Examiners shall be eligible to receive a provisional license.

(d) Any person desiring to secure a provisional license shall make application therefor in the manner and form prescribed by the rules and regulations of the Board and shall pay the fee prescribed in G.S. 90-231.

(e) A provisional licensee shall be subject to those various disciplinary measures and penalties set forth in G.S. 90-229 upon a determination of the Board that said provisional licensee has violated any of the terms or provisions of this Article. (1971, c. 756, s. 5.)

Editor's Note.—This section was enacted by Session Laws 1971, c. 756, s. 5. The section formerly numbered § 90-226 was rewritten and renumbered § 90-227 by the same 1971 act.

§ 90-227. Renewal certificates.—(a) The Board shall issue annual renewal certificates to licensed dental hygienists.

(b) The Board shall have the authority to establish in its rules and regulations:

(1) The form of application for renewal certificates;

(2) The time the application must be submitted;

(3) The type of certificate to be issued;

(4) How the certificate must be displayed;

(5) The penalty for late application;

(6) The automatic loss of license if applications are not submitted. (1945, c. 639, s. 6; 1971, c. 756, s. 6.)

Editor's Note.—This section was formerly § 90-226. It was rewritten and renumbered § 90-227 by Session Laws 1971, c. 756, which also enacted a new § 90-226.

§ 90-228. Renewal of license.—The Board shall have the authority to renew the license of a dental hygienists who fails to obtain a renewal certificate for any year provided she

(1) Makes application for a renewal of license and

(2) Meets the qualifications established by the Board. (1945, c. 639, s. 7; 1971, c. 756, s. 7.)

Editor's Note. — This section was formerly numbered § 90-227. It was rewritten and renumbered § 90-228 by Session Laws 1971, c. 756. The section formerly numbered § 90-228 was renumbered § 90-229 by the same 1971 act.

§ 90-229. Disciplinary measures.—(a) The North Carolina State Board of Dental Examiners shall have the power and authority to

(i) Refuse to issue a license to practice dental hygiene;

(ii) Refuse to issue a certificate of renewal to practice dental hygiene;
(iii) Revoke or suspend a license to practice dental hygiene;
(iv) Invoke such other disciplinary measures, censure or probative terms against a licensee as it deems proper;

in any instance or instances in which the Board is satisfied that such applicant or licensee:

(1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;
(2) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;
(3) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;
(4) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs her ability to practice dental hygiene;
(5) Is incompetent in the practice of dental hygiene;
(6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;
(7) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients;
(8) Has made fraudulent or misleading statements pertaining to her skill, knowledge, or method of treatment or practice;
(9) Has committed any fraudulent or misleading acts in the practice of dental hygiene;
(10) Has, in the practice of dental hygiene, committed an act or acts constituting malpractice;
(11) Has employed a person not licensed in this State to do or perform any act or service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which cannot lawfully be done or performed by such person;
(12) Has engaged in any unprofessional conduct as the same may be from time to time, defined by the rules and regulations of the Board;
(13) Is mentally, emotionally, or physically unfit to practice dental hygiene or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice dental hygiene unless or until such person shall have been subsequently lawfully declared to be mentally competent.

(b) As used in this section the term "licensee" includes licensees and provisional licensees and the term "license" includes licenses and provisional licenses. (1945, c. 639, s. 8; 1971, c. 756, s. 8.)

Editor's Note.—This section was formerly numbered § 90-228. It was rewritten and renumbered § 90-229 by Session Laws 1971, c. 756. Former § 90-229 was repealed by s. 9 of the same 1971 act.

§ **90-230. Certificate upon transfer to another state.** — Any dental hygienist duly licensed by the North Carolina State Board of Dental Examiners, desiring to move from North Carolina to another state, territory or foreign country, if a holder of a certificate of renewal of license from said Board, upon application to said Board and the payment to it of the fee in this Article provided, shall be issued a certificate showing her full name and address, the date of license originally issued to her, the date and number of her renewal of license, and whether any charges

have been filed with the Board against her. The Board may provide forms for such certificate, requiring such additional information as it may determine proper. (1971, c. 756, s. 10.)

Editor's Note.—This section was enacted by Session Laws 1971, c. 756, s. 10. The section formerly numbered § 90-230 was rewritten and renumbered § 90-231 by s. 11 of the same 1971 act.

§ 90-231. Opportunity for licensee or applicant to have hearing.—(a) With the exception of applicants for reinstatement after revocation, every applicant for a license or provisional license to practice dental hygiene or licensee or provisional licensee to practice dental hygiene shall after notice have an opportunity to be heard before the North Carolina State Board of Dental Examiners shall 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; or
(6) To revoke or suspend a provisional license; or
(7) To invoke any other disciplinary measures, censure or probative terms against a licensee or provisional licensee,

such proceedings to be conducted in accordance with the provisions of Chapter 150 of the General Statutes of North Carolina.

(b) In lieu of or as a part of such hearing and subsequent proceedings the Board is authorized and empowered to enter any consent order relative to the discipline, censure, or probation of a licensee, provisional licensee or an applicant for a license or provisional license, or relative to the revocation or suspension of a license or provisional license.

(c) Following the service of the notice of hearing as required by Chapter 150, the Board and the person upon whom such notice is served shall have the right to conduct adverse examinations, take depositions, and engage in such further discovery proceedings as are permitted by the laws of this State in civil matters. The Board is hereby authorized and empowered to issue such orders, commissions, notices, subpoenas, or other process as might be necessary or proper to effect the purposes of this subsection; provided, however, that no member of the Board shall be subject to examination hereunder. (1945, c. 639, s. 10; 1967, c. 489, s. 1; 1971, c. 756, s. 11.)

Editor's Note. — This section was formerly § 90-230. It was rewritten and renumbered § 90-231 by Session Laws 1971, c. 756, s. 11. A new § 90-230 was enacted by s. 10, and the section formerly numbered § 90-231 was rewritten and renumbered § 90-232 by s. 12, of the same 1971 act.

§ 90-232. Fees.—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 is authorized to charge and collect fees established by its rules and regulations not exceeding the following:

(1) Each applicant for examination $50.00
(2) Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist $35.00
(3) Each restoration of license $35.00
(4) Each provisional license $35.00

(5) Each certificate of license to a resident dental hygienist desiring to change to another state or territory $15.00

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. (1945, c. 639, s. 11; 1965, c. 163, s. 7; 1967, c. 489, s. 2; 1971, c. 756, § 12.)

Editor's Note. — This section was formerly § 90-231. It was rewritten and renumbered § 90-232 by Session Laws 1971, c. 756, s. 12. The section formerly numbered § 90-232 was rewritten and renumbered § 90-233 by s. 13 of the same 1971 act.

§ 90-233. Practice of dental hygiene. — (a) A dental hygienist may practice only under the direct supervision of one or more licensed dentists. Provided, however, that this subsection (a) shall be deemed to be complied with in the case of dental hygienists employed by the State of North Carolina in the Division of Dental Health of the State Board of Health and especially trained by said division as public health dental hygienists while performing their duties within the public schools of the State under the direction of a duly licensed dentist.

(b) A dentist in private practice may not employ more than one dental hygienist at one and the same time except when permitted to do so by the rules and regulations of the Board.

(c) Dental hygiene may be practiced only by the holder of a license or provisional license currently in effect and duly issued by the Board. The following acts, practices, functions or operations, however, shall not constitute the practice of dental hygiene within the meaning of this Article:

(1) The teaching of dental hygiene in a school or college approved by the Board in a Board-approved program by an individual licensed as a dental hygienist in any state in the United States.

(2) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a Board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3), acting as an instructor.

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

(4) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by the Board, when such functions are performed under the supervision of a dentist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3). (1945, c. 639, s. 12; 1971, c. 756, s. 13.)

Editor's Note. — This section was formerly § 90-232. It was rewritten and renumbered § 90-233 by Session Laws 1971, c. 756, s. 13. The section formerly numbered § 90-233 has been renumbered § 90-233.1. See note to § 90-233.1.

§ 90-233.1. Violation a misdemeanor.—Any person who shall violate, or aid or abet another in violating, any of the provisions of this Article shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1945, c. 639, s. 13; 1971, c. 756, s. 14.)

Editor's Note. — This section was formerly § 90-233. Session Laws 1971, c. 756, s. 14, directed that it be renumbered § 90-231; however, since there is already a § 90-231 in the General Statutes, this section has been renumbered § 90-233.1.

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 amount of per diem provided by G.S. 138-5 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; 1969, c. 445, s. 6.)

Editor's Note.—

The 1965 amendment substituted "one thousand dollars ($1,000.00) per annum" for "three hundred dollars ($300.00) per annum" at the end of this section.

The 1969 amendment substituted "amount of per diem provided by G.S. 138-5" for "sum of ten ($10.00) dollars per day" in the first sentence.

§ **90-255.1. Sale of flammable frames.**—No person shall distribute, sell, exchange or deliver, or have in his possession with intent to distribute, sell, exchange or deliver any eyeglass frame or sunglass frame which contains any form of cellulose nitrate or other highly flammable materials. Any person violating the provisions of this subsection [section] shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00), or imprisonment for not more than six months or by both such fine and imprisonment in the discretion of the court. (1971, c. 239, s. 1.)

Editor's Note.—Section 2, c. 239, Session Laws 1971, makes the act effective July 1, 1971.

ARTICLE 18.

Physical Therapy.

§ **90-256. Definitions.**—In this article, unless the context otherwise requires, the following definitions shall apply:

(1) "Examining Committee" means the North Carolina State Examining Committee of Physical Therapy.

(2) "Physical therapist" means any person who practices physical therapy.

(3) "Physical therapy" means the evaluation or treatment of any person by the employment of the effective properties of physical measures and the use of therapeutic exercises and rehabilitative procedures, with or without assistive devices, for the purposes of preventing, correcting, or alleviating a physical or mental disability. Physical therapy includes the performance of specialized tests of neuromuscular function, administration of specialized therapeutic procedures, interpretation of referrals from medical doctors and dentists, and establishment and modification of physical therapy programs for patients.

(4) "Physical therapy assistant" means any person who assists and works

under the supervision of a physical therapist by performing such patient-related activities as assigned to him by a physical therapist which are commensurate with his education and training, including simple physical therapy procedures, but not the interpretation of physicians' or dentists' referrals, performance of evaluation procedures, or determination and modification of patients' programs. (1951, c. 1131, s. 1; 1969, c. 556.)

Revision of Article.—Session Laws 1969, c. 556, rewrote this article, substituting present §§ 90-256 to 90-270 for former §§ 90-256 to 90-261, 90-261.1 and 90-262 to 90-270. The 1969 act rearranged and renumbered many of the sections and made a number of changes of substance. No detailed explanation of the changes made has been attempted, but, where appropriate, the historical citations to the former sections have been added to the sections of the article as revised by the 1969 act.

§ 90-257. Examining Committee.—The North Carolina State Examining Committee of Physical Therapy is hereby created. The Examining Committee shall consist of seven members, including at least one licensed medical doctor, four physical therapists and two physical therapy assistants, who shall be appointed by the Governor from a list submitted to him by the North Carolina Physical Therapy Association, Inc., for terms as provided in this article. Each physical therapy member of the Examining Committee shall be licensed and a resident of this State; he shall have not less than three years' experience in the practice of physical therapy immediately preceding his appointment and shall be actively engaged in the practice of physical therapy during his incumbency. Each physical therapy assistant member shall be licensed and a resident of this State, provided that the members first appointed on January 1, 1970, shall be deemed to be eligible and shall be licensed immediately upon their appointment to the Examining Committee.

Members shall be appointed to serve three-year terms, or until their successors are appointed, to commence on January 1 in respective years, provided that members of the Examining Committee on May 22, 1969 shall continue to serve for the remainder of their terms, respectively, or until their successors are appointed. The physical therapy assistant members shall be first appointed on January 1, 1970; one such member shall serve a two-year term and the other a three-year term, but thereafter, all appointments shall be for three years. In the event that a member of the Examining Committee for any reason cannot complete his term of office, another appointment shall be made by the Governor in accordance with the procedure stated above to fill the remainder of the term. No member may serve for more than two successive three-year terms.

The Examining Committee each year shall designate one of its members as chairman and one as secretary-treasurer. The Examining Committee shall have the power to make such rules and regulations not inconsistent with law which may be necessary for the performance of its duties and shall employ such clerical and other assistance as it may require. It is authorized to prescribe reasonable fees for applications for examination and for certificates of licensure but not to exceed seventy-five dollars ($75.00), and for renewals of licensure but not to exceed twenty-five dollars ($25.00). It shall be the duty of the Examining Committee to pass upon the qualifications of applicants for licensure, approve and be responsible for administering the examination to be given, and determine the applicants who successfully pass the examination. The two physical therapy assistants shall exercise this duty with the other members only as to applicants for licensure as physical therapy assistants.

Each member of the Examining Committee shall receive such per diem compensation and reimbursement for travel and subsistence as shall be set for State boards generally. (1951, c. 1131, s. 2; 1969, c. 445, s. 7; c. 556.)

Revision of Article.—See same catchline in note to § 90-256.

§ 90-258. Records to be kept; copies of record. — The Examining Committee shall keep a record of proceedings under this article and a record of all persons licensed under it. The record shall show the name of every living licensee, his last known place of business and last known place of residence and the date and number of his licensure certificate as a physical therapist or physical therapy assistant. Any interested person in the State is entitled to obtain a copy of that record on application to the Examining Committee and payment of such reasonable charge as may be fixed by them based on the costs involved. (1951, c. 1131, s. 12; 1969, c. 556.)

§ 90-259. Disposition of funds.—All fees and other moneys collected and received by the Examining Committee shall be used for the purposes of implementing this article. The financial records of the Examining Committee shall be subjected to an annual audit and paid for out of the funds of the Examining Committee. (1951, c. 1131, s. 14; 1969, c. 556.)

§ 90-260. Qualifications of applicants for examination; application; subjects of examination; fee.—Any person who desires to be licensed under this article and who

(1) Is of good moral character;
(2) Has obtained a high school education or its equivalent as determined by the Examining Committee;
(3) If an applicant for physical therapy licensure, has been graduated by a school of physical therapy approved by the American Medical Association and the American Physical Therapy Association at the time of his graduation; and
(4) If an applicant for physical therapy assistant licensure, has been graduated from a program for physical therapy assistants which has been approved by the Examining Committee, or has had training or experience deemed equivalent to such program by the Examining Committee;

may make application on a form furnished by the Examining Committee for examination for licensure as a physical therapist or physical therapy assistant by the Examining Committee. The physical therapy examination shall embrace the following subjects: the applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy as applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; and technical procedures in the practice of physical therapy as defined in this article. The physical therapy assistant examination shall embrace the following subjects: the applied sciences of anatomy, kinesiology, physics, pathology, physiology; medical ethics; simple physical therapy procedures which include massage, electrotherapy, hydrotherapy, thermotherapy, therapeutic exercise and rehabilitative procedures.

At the time of making such application, the applicant shall pay to the secretary-treasurer of the Committee the fee prescribed by the Committee, no portion of which shall be returned. (1951, c. 1131, s. 3; 1959, c. 630; 1969, c. 556.)

§ 90-261. Certificates of licensure for successful examinees.—The Examining Committee shall furnish a certificate of licensure to each applicant who successfully passes the examination for licensure as a physical therapist or physical therapy assistant, respectively. (1951, c. 1131, s. 4; 1969, c. 556.)

§ 90-261.1: Repealed by Session Laws 1969, c. 556.

Revision of Article.—See same catchline in note to § 90-256.

§ 90-262. Certificates of licensure for persons registered in other states or territories.—The Examining Committee shall furnish a certificate of licensure to any person who is a physical therapist or physical therapy assistant

registered or licensed under the laws of another state or territory, if the applicable requirements were at the date of his registration or licensure substantially equal to the requirements under this article. At the time of making such application, the applicant shall pay to the secretary-treasurer of the Committee the fee prescribed by the Committee. (1951, c. 1131, s. 6; 1959, c. 630; 1969, c. 556.)

§ 90-263. Graduate students exempt from licensure; licensure of foreign-trained physical therapists.—(a) Physical therapists, including foreign-trained physical therapists, who are graduate students in special physical therapy courses receiving a small stipend rather than the usual staff salary for practicing their profession as part of their training, shall not be required to be licensed as physical therapists in North Carolina. Any such physical therapist shall furnish sufficient information to the Examining Committee for it to determine such person's status. At the end of one year, should the student wish to continue his education in this State, he must apply to the Examining Committee for evaluation of this status as of that time.

(b) A temporary certificate of licensure, limited to six months, may be issued to a foreign-trained physical therapist who

(1) Makes the usual application for licensure and pays the required fee,
(2) Holds a diploma from an approved school of physical therapy in his own country, and
(3) Is a member of a professional association belonging to the World Confederation of Physical Therapists whose credentials are acceptable to the American Physical Therapy Association and to the North Carolina State Examining Committee of Physical Therapy.

(c) A regular certificate of licensure may be issued to a foreign-trained physical therapist who fulfills the above requirements in subsection (b) of this section and who passes the next North Carolina State examination for licensure or who has passed the American Physical Therapy Association's examination for foreign-trained physical therapists. (1959, c. 630; 1969, c. 556.)

§ 90-264. Renewal of license; lapse; revival.—Every licensed physical therapist or physical therapy assistant shall, during the month of January, 1970, and during the month of January every year thereafter, apply to the Examining Committee for a renewal of licensure and pay to the secretary-treasurer the prescribed fee. Licenses that are not so renewed shall automatically lapse, provided that any licenses in effect on May 22, 1969 shall remain in effect until February 1, 1970, unless revoked or suspended in accordance with the provisions of this article. The Examining Committee shall revive and extend a lapsed license on the payment of current fees provided the requirements for securing an original certificate have not been changed so as to have become more stringent than the requirements at the time the certificate lapsed, but the Examining Committee may refuse to grant any such extension on the same grounds as are set forth in this article for refusing to grant or for revoking the license of a physical therapist or physical therapy assistant. (1951, c. 1131, s. 7; 1959, c. 630; 1969, c. 556.)

§ 90-265. Grounds for refusing licensure; revocation.—The Examining Committee shall refuse to grant licensure to any person or shall revoke or suspend the license of any physical therapist or physical therapy assistant if he

(1) Is habitually drunk or is addicted to the use of narcotic drugs;
(2) Has been convicted of violating any State or federal narcotic law;
(3) Has obtained or attempted to obtain licensure by fraud or material misrepresentation;
(4) Is guilty of any act derogatory to the standing and morals of the profession of physical therapy, including the treatment or undertaking to treat ailments of human beings otherwise than by physical therapy

and undertaking to practice independent of the referral or prescription from a licensed medical doctor or dentist.

The procedure for revocation shall be that set forth in chapter 150 of the General Statutes relating to uniform revocation of licenses. (1951, c. 1131, s. 8; 1959, c. 630; 1969, c. 556.)

§ 90-266. Unlawful practice.—(a) No person shall practice or hold himself out as being able to practice physical therapy in this State, unless he is licensed in accordance with this article.

(b) No person shall consult, teach or supervise, or hold himself out as being able to do so, in physical therapy in this State, unless he is licensed in accordance with this article.

(c) No person shall represent himself as being a licensed or registered physical therapist or physical therapy assistant, or use in connection with his name any letters, words, or insignia indicating or implying that he is a licensed or registered physical therapist or a physical therapy assistant, unless he is licensed in accordance with this article.

(d) No person shall practice physical therapy except by referral, prescription or orders of a licensed medical doctor or dentist.

(e) Nothing in this article shall be construed in any way to prohibit the following acts or practices:

(1) Any act in the practice of his profession by a person duly licensed in this State;

(2) The practice of physical therapy in the discharge of their official duties by physical therapists in the United States armed services, public health service, Veterans Administration or other federal agency;

(3) The rendering of physical therapy by any person in a medical emergency under the direct supervision of a licensed medical doctor;

(4) Participation in special physical therapy education projects, demonstrations or courses by physical therapists qualified in other jurisdictions;

(5) The administration of simple massages and the operation of health clubs so long as not intended to constitute or represent the practice of physical therapy;

(6) The performance by any person of simple mechanical or machine-assisted acts in the physical care of a patient, not requiring the knowledge and skill of a physical therapist, under orders or directions of a licensed medical doctor or dentist.

(f) Nothing in this article shall be construed to authorize persons licensed under this article to use radiology for diagnostic and therapeutic purposes, or to use electricity for surgical or cauterization purposes, or to make diagnoses of human conditions, or to prescribe therapeutic measures. (1951, c. 1131, ss. 9, 11; 1969, c. 556.)

§ 90-267. Fraudulently obtaining, etc., licensure a misdemeanor.—No person shall obtain or attempt to obtain licensure as a physical therapist or physical therapy assistant by a willful misrepresentation or any fraudulent representation. (1951, c. 1131, s. 10; 1969, c. 556.)

§ 90-268. Violation a misdemeanor.—Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned at the discretion of the court. (1969, c. 556.)

§ 90-269. Title.—This article may be cited as the "Physical Therapy Practice Act." (1951, c. 1131, s. 15; 1969, c. 556.)

§ 90-270. Osteopaths, chiropractors and podiatrists not restricted.—Nothing in this article shall restrict the practice of physical therapy by licensed osteopaths, chiropractors, or podiatrists. (1951, c. 1131, s. 15.1; 1969, c. 556.)

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 Articles 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 ap-

paratus, eye exercises, orthoptics, vision raining, visual training and develop mental 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 educational 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 fifty dollars ($50.00), 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 fifty dollars ($50.00), 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; 1971, c. 889, ss. 2, 3.)

Editor's Note. — The 1971 amendment substituted "fifty dollars ($50.00)" for "twenty-five dollars ($25.00)" in subsections (a)(1) and (b)(1).

§ 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 ten dollars ($10.00). 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; 1971, c. 889, s. 1.)

Editor's Note. — The 1971 amendment substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in the second sentence.

§ 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 18.—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 18 years of age or over, or less than 18 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 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 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; 1971, c. 1231, s. 1.)

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.

The 1971 amendment substituted "18" for "twenty-one" in two places near the beginning of the section.

Necessary Procedure for Sterilization of an Unmarried Minor.—See opinion of Attorney General to Mr. William W. Aycock, Jr., Attorney for Edgecombe County Department of Social Services, 11/9/70.

§ 90-272. Operation on unmarried minor. — Any such physician or surgeon may perform a surgical interruption of vas deferens or Fallopian tubes upon any unmarried person under the age of 18 years when so requested in writing by such minor and in accordance with the conditions and requirements set forth in G.S. 90-271, provided that the juvenile court of the county wherein such minor resides, upon petition of the parent or parents, if they be living, or the guardian or next friend of such minor, shall determine that the operation is in the best interest of such minor and shall enter an order authorizing the physician or surgeon to perform such operation. (1963, c. 600; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "twenty-one."

Necessary Procedure for Sterilization of an Unmarried Minor.—See opinion of Attorney General to Mr. William W. Aycock, Jr., Attorney for Edgecombe County Department of Social Services, 11/9/70.

Article 20.

Nursing Home Administrator Act.

§ **90-275.1. Title.**—This article shall be known and may be cited as the "Nursing Home Administrator Act." (1969, c. 843, s. 1.)

Editor's Note. — Session Laws 1969, c. 843, s. 5, provides: "This article shall take effect on July 1, 1969, but no licenses shall be required or issued prior to October 1, 1969."

§ **90-276. Definitions.**—For the purposes of this article, and as used herein:

(1) The term "Board" means the North Carolina State Board of Examiners for Nursing Home Administrators hereinafter created.

(2) The term "nursing home" means any institution or facility defined as such for licensing purposes under § 130-9 (c) [§ 130-9 (e)] of the General Statutes, whether proprietary or nonprofit, including but not limited to, nursing homes owned or administered by the federal or state government or any agency or political subdivision thereof, and nursing homes operated in combination with a home for the aged or any other facility. Provided, this article shall not apply to any institution conducted by and for the adherents of any church or religious denomination for the purpose of providing facilities for the care and treatment of the sick who depend solely upon spiritual means through prayer for healing in the practice of the religion of such church or denomination and exempt from licensing, and, notwithstanding any other provision of this article, no license and registration or provisional license shall be required of any individual responsible for planning, organizing, directing, controlling and administering such institution.

(3) The term "nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a nursing home, whether such individual has an ownership interest in such home, and whether his functions and duties are shared with one or more individuals. (1969, c. 843, s. 1.)

Editor's Note.—The reference to § 130-9 (e) has been inserted in brackets as a suggested correction of the reference in the 1969 act to § 130-9 (c).

§ **90-277. Composition of Board.**—There is hereby created the State Board of Examiners for Nursing Home Administrators which shall consist of six members. The State Health Director or his designee shall be an ex officio member who shall serve as secretary for the Board and have no vote. The Governor shall appoint two members from a list of active administrators of nursing homes certified as such by the State Health Director; one member from a list of active administrators of nonprofit nursing homes certified as such by the State Health Director; one member who is a practicing licensed physician; and one member who is professionally involved in health care training or administration. On July 1, 1969, three members shall be appointed by the Governor for terms of three years, two members shall be appointed for two years, and thereafter all terms shall be three years, but no member shall serve more than two consecutive full terms.

Any vacancy occurring in the position of an appointive member shall be filled by the Governor for the unexpired term in the same manner as for new appointments. Appointive members may be removed by the Governor for cause after due notice and hearing. The three nursing home administrators initially appointed to the Board shall be deemed to be and shall become licensed nursing home administrators immediately upon their appointment and qualification as members of the Board. (1969, c. 843, s. 1.)

§ 90-278. Qualifications for licensure.—The Board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators.

(1) A license as a nursing home administrator shall be issued to any person upon the Board's determination that:

a. He is at least 21 years of age, of good moral character and of sound physical and mental health; and

b. He has satisfactorily completed a course in instruction and training prescribed by the Board, which course shall be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by nursing homes, the laws governing the operation of nursing homes and the protection of the interests of patients therein, and the elements of good nursing home administration; or have presented evidence satisfactory to the Board of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a nursing home; and

c. He has passed an examination administered by the Board and designed to test for competence in the subject matters referred to in paragraph b hereof.

(2) A provisional license shall be issued to any person upon the Board's determination that he has met the requirements in subdivision (1) a hereof and is certified by the State Health Director as having served as administrator of a licensed nursing home for a period of one year immediately preceding the effective date of this article. All such provisional licenses shall terminate two years after issuance or June 30, 1972, whichever is earlier, and none shall be issued by the Board thereafter.

(3) A temporary license may be issued under requirements and conditions prescribed by the Board to any person to act or serve as administrator of a nursing home without meeting the requirements for full licensure, but only when there are unusual circumstances preventing compliance with the procedures for licensing elsewhere provided by this article. The temporary license shall be issued by the secretary only for the period prior to the next meeting of the Board, at which time the Board may renew such temporary license for a further period only up to one year. (1969, c. 843, s. 1.)

Editor's Note. — Session Laws 1969, c. 843, s. 5, provides: "This article shall take effect on July 1, 1969, but no licenses shall be required or issued prior to October 1, 1969."

§ 90-279. Licensing function.—The Board shall license nursing home administrators in accordance with rules and regulations issued and from time to time revised by it. A nursing home administrator's license shall not be transferable and shall be valid until expiration or until suspended or revoked for violation of this article or of the standards established by the Board pursuant to this article. Denial of issuance or renewal, suspension or revocation by the Board shall be subject to the provisions of chapter 150 of the General Statutes entitled "Uniform Revocation of Licenses." (1969, c. 843, s. 1.)

§ 90-280. License fees; display of license.—Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the Board, which fee shall not exceed one hundred dollars ($100.00). A license shall expire on the 30th day of September of the second year following its issuance, and shall be renewable biennially upon payment of a renewal fee, fixed by the Board not to exceed one hundred dollars ($100.00). Each person licensed

as a nursing home administrator shall be required to display his license certificate in a conspicuous place in his place of employment. (1969, c. 843, s. 1.)

§ 90-281. Collection of funds.—All fees and other moneys collected and received by the Board shall be handled as provided by law and as prescribed by the State Treasurer. Such funds shall be used and expended by the Board to pay the compensation and travel expenses of members and employees of the Board and other expenses necessary for the Board to administer and carry out the provisions of this article. 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. (1969, c. 843, s. 1.)

§ 90-282. Advisory council.—The Board may create an advisory council to make recommendations and to supply information to the Board pertaining to the administration and enforcement of this article, but the advisory council shall have no executive, administrative, or appointive powers or duties. (1969, c. 843, s. 1.)

§ 90-283. Organization of Board; compensation; employees and services.—The Board shall elect from its membership a chairman and vice-chairman, and shall adopt rules and regulations to govern its proceedings. Board members shall be entitled to receive only such compensation and reimbursement as is prescribed by chapter 138 of the General Statutes for State boards generally. At any meeting a majority of the voting members shall constitute a quorum. The Board may, in accordance with the State Personnel Act, employ any necessary personnel to assist it in the performance of its duties and may contract for such services as may be necessary to carry out the provisions of this article. (1969, c. 843, s. 1.)

§ 90-284. Exclusive jurisdiction of Board.—The Board shall have exclusive authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a nursing home under the provisions of this article, and the holder of a license under the provisions of this article shall be deemed qualified to serve as the administrator of a nursing home for all purposes. (1969, c. 843, s. 1.)

§ 90-285. Functions and duties of the Board.—The Board shall meet at least once annually in Raleigh or any other location designated by the chairman and shall have the following functions and duties:

(1) Develop, impose and enforce rules and regulations setting out standards which must be met by individuals in order to receive and hold a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators shall be individuals who are of good character and who are otherwise suitable, by training or experience in the field of institutional administration, to serve as nursing home administrators.

(2) Develop and apply appropriate methods and procedures, including examination and investigations, for determining whether individuals meet such standards, and administer an examination at least twice each year at such times and places as the Board shall designate.

(3) Issue licenses to qualified individuals; and for cause, after due notice and hearing, revoke, suspend, or deny renewal of licenses previously issued by the Board in any case where the individual holding such license is determined substantially to have failed to conform to the requirements of such standards.

(4) Establish and implement procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.

(5) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Board to the effect that any indi-

vidual licensed as a nursing home administrator has failed to comply with the requirements of such standards.

(6) Conduct a continuing study and investigation of nursing homes and nursing home administrators within the State in order to make improvements in the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of such standards, and to raise the quality of nursing home administration in such other ways as may be effective.

(7) Conduct, or cause to be conducted by contract or otherwise, one or more courses of instruction and training sufficient to meet the requirements of this article, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are sufficient courses conducted by others within this State. In lieu thereof the Board may approve courses conducted within and without this State as sufficient to meet the education and training requirements of this article.

(8) Make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in section 1908 of the Social Security Act, the federal rules and regulations promulgated thereunder, and other pertinent federal authority.

(9) Receive and disburse any funds appropriated or given to the Board, including any federal funds, to carry out the purposes of this article.

(10) Maintain a register of all applications for licensing and registration of nursing home administrators, which register shall show: the place or residence, name and age of each applicant; the name and address of employer or business connection of each applicant; the date of application; information of educational and experience qualifications; the action taken by the Board and the dates; the serial number of the license issued to the applicant; and such other pertinent information as may be deemed necessary. (1969, c. 843, s. 1.)

§ **90-286. Renewal of license.**—Every holder of a nursing home administrator's license shall renew it biennially, by making application to the Board. Renewals of licenses shall be granted as a matter of course, unless the Board finds that the applicant has acted or failed to act in such a manner, or under circumstances, as would constitute grounds for suspension, revocation, or denial of renewal of a license, as provided by this article and the rules and regulations issued pursuant to this article. (1969, c. 843, s. 1.)

§ **90-287. Reciprocity with other states.**—The Board may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the Board finds that the standards for licensure in such other jurisdiction are at least the substantial equivalent of those prevailing in this State, and that the applicant is otherwise qualified. (1969, c. 843, s. 1.)

§ **90-288. Misdemeanor.** — It shall be unlawful and constitute a misdemeanor punishable upon conviction by a fine or imprisonment in the discretion of the court,

(1) For any person to act or serve in the capacity as, or hold himself out to be, a nursing home administrator, or use any title, sign, or other indication that he is a nursing home administrator, unless he is the holder of a valid license as a nursing home administrator, issued in accordance with the provisions of this article, and

(2) For any person to violate any of the provisions of this article or any rules and regulations issued pursuant thereto. (1969, c. 843, s. 1.)

Article 21.

Determination of Need for Medical Care Facilities.

§ **90-289. Orderly development of medical facilities.**—The General Assembly of North Carolina declares that it is the public policy of the State to encourage the necessary and adequate development of health and medical care facilities and that this development shall be accomplished in a manner which is orderly, timely, economical, and without unnecessary duplication of these facilities. (1971, c. 1164.)

§ **90-290. Definitions.**—(1) "Approved areawide comprehensive health planning council" means a voluntary nonprofit or public agency or organization that is recognized and approved by the Division of State Planning to function as a health planning agency.

(2) "Medical care facility" refers to all of the following facilities licensed by State agencies: hospitals, nursing homes, intermediate care facilities and mental hospitals. The term includes facilities licensed by a State agency for inpatient care services, whether operated for profit or not, and whether private or owned by a local governmental unit. The term does not include physicians' offices, first-aid stations for emergency medical or surgical treatment or similar facilities where no overnight bed care is contemplated or performed.

(3) "State licensing agency" refers to the State agency empowered to license a medical care facility. (1971, c. 1164.)

§ **90-291. Certificate of need.**—(a) Any other provisions of law to the contrary notwithstanding, such State agencies as administer licensing laws applicable to medical care facilities shall, as a precondition to issuing or continuing the license applied for, make a "determination of need" with respect to any new construction, construction of additional bed capacity or conversion of existing bed capacity for which a license is requested.

(b) Any proposed medical care facility, desiring to be licensed by a State licensing agency, shall make application for a certificate of need, as required by this Article, when such facility proposes new construction. Any existing medical care facility need not apply for a certificate of need except when the facility proposes new construction, construction of additional bed capacity, or the conversion of existing bed capacity to a different license category, except outpatient and emergency services. No certificate of need shall be required as a precondition to issuing or continuing a license to an existing medical care facility in the absence of new construction, construction of additional bed capacity or conversion of existing bed capacity to a different license category for the existing medical care facility.

(c) Certificates of need shall be issued or denied, suspended, revoked or reinstated by such agencies having responsibility for licensing medical care facilities in accordance with law and rules and regulations of the licensing agency. No such certificates shall be denied except with the approval of the board or commission of a State agency licensing medical care facilities; and no decision shall be made contrary to the recommendations of an areawide health planning council unless such council has been notified by such board of the reason for its determination and has been granted full opportunity for hearing thereon by the board reviewing such a council's findings.

No certificate of need shall be issued unless the action proposed in the application for such certificate is necessary to provide new or additional inpatient facilities in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health services. In making such determinations, there shall be taken into consideration

(1) The size, composition and growth of the population of the area to be served;

(2) The number of existing and planned facilities of similar types;
(3) The extent of utilization of existing facilities; and
(4) The availability of facilities or service which may serve as alternatives or substitutes.

(d) Applications for certificates of need shall be made to the State agencies licensing medical care facilities and shall be in such form and contain such information as such State agencies may prescribe. Upon receipt of an application, copies thereof shall be referred by such State licensing agency to the appropriate approved areawide health planning council for review and to the Division of State Planning for information.

The areawide health planning councils shall provide adequate mechanisms for full consideration of such application and for developing recommendations thereon. Such recommendations, whether favorable or unfavorable, shall be forwarded to the State licensing agency within 60 days of the date of referral of the application. A copy of the recommendations of the areawide comprehensive health planning council shall be forwarded to the applicant facility and to the Division of State Planning for information.

Recommendations by areawide comprehensive health planning councils and the State licensing agencies as to issuance of a certificate of need shall be governed by and based upon the subdivisions (1) through (4) set forth in subsection (c) hereof.

(e) Construction of a new medical care facility or expansion of an existing facility to gain additional bed capacity shall not be instituted or commenced after the effective date of this Article except upon application for and receipt of a certificate of need as provided herein: Provided that in any case which, prior to July 21, 1971, there has been proposed the construction of a new facility or the expansion of bed capacity of an existing facility and preliminary plans have been submitted to a State licensing agency, such proposed projects are exempt to the extent of initial construction or expansion provided for in such preliminary plans from the provisions of this Article.

(f) A certificate of need shall be valid for such period of time, not to exceed two years, as may reasonably be required to complete preparation of detailed construction plans, secure necessary funds and building permits and undertake the construction of a medical facility in question: Provided, that, with the advice of an areawide health planning agency or, when appropriate, the other resources utilized by a State licensing agency, the agency may renew the certificate for such further periods as may be reasonable where the applicant has shown that substantial and continuing progress towards commencement of construction has been demonstrated. A certificate of need shall be nontransferable.

(g) The issuance of a certificate of need for a specific project in a medical facility's long-range plan shall not constitute a guarantee that all future proposals contained in that long-range plan will receive a certificate of need; however, the existence of previously certified projects that provide economies and improvement of service that may be derived from operation of joint, cooperative or shared health care resources and reduce the overall cost of future projects shall be taken into account by the areawide health planning council and the licensing agency in reviewing subsequent proposals.

(h) Decisions as to a certificate of need may be made initially by administrative personnel of any board or agency to the extent permitted by law and the rules and regulations of the agency, provided that the rules and regulations shall provide for a final determination by the board or agency upon the written request of any interested party. Decisions concerning a certificate of need shall be appealable to, or subject to judicial review in, the courts as provided by law with regard to licensing decisions of any licensing agency.

(i) The boards or commissions of State licensing agencies shall have authority to adopt policies, rules and regulations in order to effectuate the provisions and purposes of this Article. (1971, c. 1164.)

Chapter 90A.

Sanitarians and Water and Wastewater Treatment Facility Operators.

ARTICLE 1.

Sanitarians.

§ 90A-1. Definitions.

Editor's Note.—Session Laws 1969, c. 1059, effective July 1, 1969, added "and Water and Wastewater Treatment Facility Operators" to the heading of this chapter, designated the former provisions of this chapter as article 1 and added articles 2 and 3.

§§ 90A-14 to 90A-19: Reserved for future codification purposes.

ARTICLE 2.

Certification of Water Treatment Facility Operators.

§ 90A-20. Purpose.—It is the purpose of this article to protect the public health and to conserve and protect the water resources of the State; to protect the public investment in water treatment facilities; to provide for the classifying of public water treatment facilities; to require the examination of water treatment facility operators and the certification of their competency to supervise the operation of water treatment facilities; and to establish the procedures for such classification and certification. (1969, c. 1059, s. 2.)

Editor's Note.—Session Laws 1969, c. 1059, s. 6, makes the act effective July 1, 1969.

§ 90A-21. Water Treatment Facility Operators Board of Certification.—(a) Board Membership.—There is hereby established within the State Board of Health a Water Treatment Facility Operators Board of Certification (hereinafter termed the "Board of Certification") composed of seven members to be appointed by the State Health Director as follows:

(1) One member who is currently employed as a water treatment facility operator;

(2) One member who is manager of a North Carolina municipality using a surface water supply;

(3) One member who is manager of a North Carolina municipality using a treated groundwater supply;

(4) One member who is employed as a director of utilities, water superintendent, or equivalent position with a North Carolina municipality;

(5) One member employed by a private water utility or private industry and who is responsible for the operation or supervision of a water supply and treatment facility;

(6) One member who is a faculty member of a four-year college or university whose major field is related to water supply; and

(7) One member employed by the State Board of Health and working in the field of water supply who shall serve as chairman of the Board of Certification.

(b) Terms of Office.—The chairman of the Board of Certification shall serve at the pleasure of the State Health Director. All other members shall serve terms of three years, except that the State Health Director shall make initial appointments for terms of one year for two members, two years for two members, and three years for two members in order that terms of the members will be staggered. Appointments to fill a vacancy during the term of a member shall be for the unexpired term only. Any member may be appointed for more than one term in the discretion of the State Health Director.

(c) Powers and Responsibilities.—The Board of Certification shall establish all rules, regulations and procedures with respect to the certification program and advise and assist the State Health Director in its administration.

(d) Compensation.—Members of the Board of Certification shall receive ten dollars ($10.00) per day for each day actually spent in the performance of their duties, plus actual travel expenses incurred in connection with the performance of their duties as provided by law for members of State boards and commissions generally. (1969, c. 1059, s. 2.)

§ 90A-22. Classification of water treatment facilities.—The Board of Certification, with the advice and assistance of the State Health Director, shall classify all surface water treatment facilities and all facilities for treating groundwater supplies that are used, or intended for use, as part of a public water supply system with due regard for the size of the facility, its type, character of water to be treated, other physical conditions affecting the treatment of the water, and with respect to the degree of skill, knowledge, and experience that the operator responsible for the water treatment facility must have to supervise successfully the operation of the facilities so as to adequately protect the public health. (1969, c. 1059, s. 2.)

§ 90A-23. Grades of certificates.—The Board of Certification, with the advice and assistance of the State Health Director, shall establish grades of certification for water treatment facility operators corresponding to the classification of water treatment facilities. The grades of certification shall be ranked so that a person holding a certification in the highest grade is thereby affirmed competent to operate water treatment facilities in the highest classification and any water treatment facility in a lower classification; a person holding a certification in the next highest grade is affirmed as competent to operate water treatment facilities in the next highest classification and any lower classification; and in a like manner through the range of grades of certification and classification of water treatment facilities. (1969, c. 1059, s. 2.)

§ 90A-24. Operator qualifications and examination.—The Board of Certification, with the advice and assistance of the State Health Director, shall establish minimum requirements of education, experience and knowledge for each grade of certification for water treatment facility operators, and shall establish procedures for receiving applications for certification, conducting examinations and making investigations of applicants as may be necessary and appropriate to the end that prompt and fair consideration be given every application and the water treatment facilities of the State may be adequately supervised by certified operators. (1969, c. 1059, s. 2.)

§ 90A-25. Issuance of certificates.—(a) An applicant, upon meeting satisfactorily the appropriate requirements shall be issued a suitable certificate by the Board of Certification designating the level of his competency. Certificates shall be permanent unless revoked for cause or replaced by one of a higher grade.

(b) Certificates may be issued, without examination, in a comparable grade to any person who holds a certificate in any state, territory or possession of the United States, if in the judgment of the Board of Certification the requirements for operators under which the person's certificate was issued do not conflict with the provisions of this article, and are of a standard not lower than that specified under rules and regulations adopted under this article.

(c) Certificates in an appropriate grade will be issued to operators who, on July 1, 1969, hold certificates of competency issued under the voluntary certification program now being administered through the Division of Sanitary Engineering of the State Board of Health with the cooperation of the North Carolina Water Works Operators Association, the North Carolina Section of the American Water Works Association, and the North Carolina League of Municipalities.

(d) Certificates in an appropriate grade will be issued without examination to any person or persons certified by the governing board in the case of a city, town, county, sanitary district, or other political subdivision, or by the owner in the case of a private utility or industry, to have been in responsible charge of its water treatment facilities on the date the Board of Certification notifies the governing board, or owner, of the classification of its water treatment facility, and if the application for such certification is made within one year of the date of notification. A certificate so issued will be valid for use by the holder only in the water treatment facility in which he was employed at the time of his certification.

(e) Temporary certificates in any grade may be issued without examination to any person employed as a water treatment facility operator when the Board of Certification finds that the supply of certified operators, or persons with training necessary to certification, is inadequate. Temporary certificates shall be valid for only one year but may be renewed. Temporary certificates may be issued with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board of Certification may deem necessary to protect the public health. (1969, c. 1059, s. 2.)

§ 90A-26. Revocation of certificate. — The Board of Certification, in accordance with the procedure set forth in chapter 150 of the General Statutes of North Carolina, may revoke the certificate of an operator when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. (1969, c. 1059, s. 2.)

§ 90A-27. Application fee.—The Board of Certification, in establishing procedures for receiving applications for certification, shall impose fees, or schedules of fees, adequate to meet the anticipated costs of administering the classification and certification programs. (1969, c. 1059, s. 2.)

§ 90A-28. Promotion of training and other powers.—The Board of Certification and the State Health Director are authorized to take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this article, including, but not limited to, the providing of training for operators and cooperating with educational institutions and private and public associations, persons, or corporations in the promotion of training for water treatment facility personnel. (1969, c. 1059, s. 2.)

§ 90A-29. Certified operators required.—On and after July 1, 1971, every person, firm, or corporation, municipal or private, owning or having control of a water treatment facility shall have the obligation of assuring that the operator in responsible charge of such facility is duly certified by the Board of Certification under the provisions of this article. No person, after July 1, 1971, shall perform the duties of an operator, in responsible charge of a water treatment facility, without being duly certified under the provisions of this article. (1969, c. 1059, s. 2.)

§§ 90A-30 to 90A-34: Reserved for future codification purposes.

ARTICLE 3.

Certification of Wastewater Treatment Plant Operators.

§ 90A-35. Purpose.—It is the purpose of this article to protect the public health and to conserve and protect the quality of the water resources of the State and maintain the quality of receiving streams as assigned by the North Carolina Board of Water and Air Resources; to protect the public investment in wastewater treatment facilities; to provide for the classifying of wastewater treatment plants; to require the examination of wastewater treatment plant operators and the certification of their competency to supervise the operation of such facilities; and to establish procedures for such classification and certification. (1969, c. 1059, s. 3.)

Editor's Note. — Session Laws 1969, c. 1059, s. 6, makes the act effective July 1, 1969.

§ 90A-36. Wastewater Treatment Plant Operators Board of Certification.—(a) Board Membership.—There is hereby established within the Department of Water and Air Resources a Wastewater Treatment Plant Operators Board of Certification (hereinafter termed the "Board of Certification") composed of seven members to be appointed by the Assistant Director of the Department of Water and Air Resources, with the approval of the Board of Water and Air Resources, as follows:

(1) Two persons who are currently employed as wastewater treatment plant operators, wastewater plant superintendents, water and sewer superintendents, or equivalent positions with a North Carolina municipality;
(2) One member who is manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;
(3) One member who is manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;
(4) One member employed by a private industry and who is responsible for supervising the treatment or pretreatment of industrial wastewater;
(5) One member who is a faculty member of a four-year college or university, whose major field is related to wastewater treatment; and
(6) One member who is employed by the Department of Water and Air Resources and works in the field of water pollution control, who shall serve as chairman of the Board of Certification.

(b) Terms of Office.—The chairman of the Board of Certification shall serve at the pleasure of the Assistant Director of the Department of Water and Air

Resources. All other members shall serve terms of three years, except that the Assistant Director of the Department of Water and Air Resources shall make initial appointments for terms of one year for two members, two years for two members, and three years for two members in order that terms of the members will be staggered. Appointments to fill a vacancy during the term of a member shall be for the unexpired term only. Any member may be appointed for more than one term in the discretion of the Assistant Director.

(c) Powers and Responsibilities.—The Board of Certification shall establish all rules, regulations, and procedures necessary with respect to the certification program and advise and assist the Assistant Director of the Department of Water and Air Resources in its administration.

(d) Compensation.—Members of the Board of Certification shall receive ten dollars ($10.00) per day for each day actually spent in the performance of their duties, plus actual travel expenses incurred in connection with the performance of their duties as provided by law for members of State boards and commissions generally. (1969, c. 1059, s. 3.)

§ 90A-37. Classification of wastewater treatment facilities. — The Board of Certification, with the advice and assistance of the Assistant Director of the Department of Water and Air Resources, shall classify all wastewater treatment facilities under the jurisdiction of the North Carolina Board of Water and Air Resources, as provided in G.S. 130-161, and those operated by institutions and agencies of the State of North Carolina. In making the classification, the Board of Certification shall give due regard, among other factors, to the size of the facility, the nature of the wastes to be treated or removed from the wastewater, the treatment process to be employed, and the degrees of skill, knowledge and experience that the operator of the wastewater treatment facility must have to supervise the operation of the facility so as to adequately protect the public health and maintain the water quality standards in the receiving waters as assigned by the North Carolina Board of Water and Air Resources. (1969, c. 1059, s. 3.)

§ 90A-38. Grades of certificates.—The Board of Certification, with the advice and assistance of the Assistant Director of the Department of Water and Air Resources, shall establish grades of certification for wastewater treatment plant operators corresponding to the classification of wastewater treatment facilities. The grades of certification shall be ranked so that a person holding a certification in the highest grade is thereby affirmed competent to operate wastewater treatment facilities in the highest classification and any treatment facility in a lower classification; a person holding a certification in the next highest grade is affirmed as competent to operate wastewater treatment facilities in the next-to-the-highest classification and any lower classification; and in a like manner through the range of grades of certification and classification of wastewater treatment facilities. (1969, c. 1059, s. 3.)

§ 90A-39. Operator qualifications and examination.—The Board of Certification, with the advice and assistance of the Assistant Director of the Department of Water and Air Resources, shall establish minimum requirements of education, experience and knowledge for each grade of certification for wastewater treatment plant operators, and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate to the end that prompt and fair consideration be given every application and the wastewater treatment facilities within the State may be adequately supervised by certified operators. (1969, c. 1059, s. 3.)

§ 90A-40. Issuance of certificates. — (a) An applicant, upon meeting satisfactorily the appropriate requirements, shall be issued a suitable certificate by the Board of Certification designating the level of his competency. Certificates shall be permanent unless revoked for cause or replaced by one of a higher grade.

(b) Certificates may be issued, without examination, in a comparable grade to any person who holds a certificate in any state, territory or possession of the United

States, if in the judgment of the Board of Certification the requirements for operators under which the person's certificate was issued do not conflict with the provisions of this article, and are of a standard not lower than that specified under rules and regulations adopted under this article.

(c) Certificates in the appropriate grade will be issued, without examination, to operators who, on July 1, 1969, hold certificates of competency issued under the voluntary certification program now being administered through the Department of Water and Air Resources, with the cooperation of the Sanitary Engineering Division of the State Board of Health, the North Carolina League of Municipalities, and the North Carolina Water Pollution Control Association.

(d) Certificates in an appropriate grade will be issued without examination to any person or persons certified by the governing board in the case of a city, town, county, sanitary district, or other political subdivision, or by the owner in the case of a private utility or industry, to have been in responsible charge of its wastewater treatment facilities on the date the Board of Certification notifies the governing board, or owner, of the classification of its treatment facility, and if the application for such certification is made within one year of the date of notification. A certificate so issued will be valid for use by the holder only in the treatment facility for which he had responsible charge at the time of his certification.

(e) Temporary certificates, in any grade and without examination, may be issued to any person employed as a wastewater treatment plant operator when the Board of Certification finds that the supply of certified operators, or persons with training and experience necessary to certification, is inadequate. Temporary certificates shall be valid for only one year, but may be renewed. Temporary certificates may be issued with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board of Certification may deem necessary to protect the public health and maintain the water quality standards in the receiving waters as assigned by the North Carolina Board of Water and Air Resources. (1969, c. 1059, s. 3.)

§ 90A-41. Revocation of certificate. — The Board of Certification, in accordance with the procedure set forth in chapter 150 of the General Statutes of North Carolina, may revoke the certificate of an operator when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. (1969, c. 1059, s. 3.)

§ 90A-42. Application fee.—The Board of Certification, in establishing procedures for receiving applications for certification, shall impose fees, or schedules of fees, adequate to meet the anticipated costs of administering the classification and certification programs. (1969, c. 1059, s. 3.)

§ 90A-43. Promotion of training and other powers.—The Board of Certification and the Assistant Director of the Department of Water and Air Resources are authorized to take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this article, including, but not limited to, the providing of training for operators and cooperating with educational institutions and private and public associations, persons, or corporations in the promotion of training for wastewater treatment personnel. (1969, c. 1059, s. 3.)

§ 90A-44. Certified operators required. — On and after July 1, 1971, every person, firm, or corporation, municipal or private, owning or having control of a wastewater treatment works shall have the obligation of assuring that the operator in responsible charge of such plant is duly certified by the Board of Certification under the provisions of this article. No person, after July 1, 1971, shall perform the duties of an operator, in responsible charge of a wastewater treatment works, without being duly certified under the provisions of this article. (1969, c. 1059, s. 3.)

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 93.

Public Accountants.

§ 93-8. Public practice of accounting by corporations prohibited.— Except as provided for in chapter 55B of the General Statutes of North Carolina, it shall be unlawful for any corporation to engage in the public practice of accountancy in this State. (1925, c. 261, s. 6; 1951, c. 844, s. 3; 1969, c. 718, s. 17.)

Editor's Note.—

The 1969 amendment, effective Jan. 1, 1970, substituted "Except as provided for in chapter 55B of the General Statutes of North Carolina" for "On and after July 1, 1951" at the beginning of the section.

§ 93-12. Board of Certified Public Accountant Examiners. — The name of the State Board of Accountancy is hereby changed to State Board of Certified Public Accountant Examiners and said name State Board of Certified Public Accountant Examiners is hereby substituted for the name State Board of Accountancy wherever the latter name appears or is used in Chapter 93 of the General Statutes. Said Board is created as an agency of the State of North Carolina and shall consist of four persons to be appointed by the Governor, all of whom shall be holders of valid and unrevoked certificates as certified public accountants issued under the provisions of this Chapter. Members of the Board shall hold office for the term of three years and until their successors are appointed. Appointments to the Board shall be made under the provisions of this Chapter as and when the terms of the members of the present State Board of Accountancy expire; provided, that all future appointments to said Board shall be made for a term of three years expiring on the 30th day of June. The powers and duties of the Board shall be as follows:

(7) To charge for each examination and certificate provided for in this Chapter a fee not exceeding fifty dollars ($50.00). This fee shall be payable to the secretary-treasurer of the Board by the applicant at the time of filing application. In no case shall the examination fee be refunded, unless in the discretion of the Board the applicant shall be deemed ineligible for examination.

(8) To require the renewal of all certificates of qualification annually on the first day of July, and to charge and collect a fee not to exceed twenty-five dollars ($25.00) for such renewal.

(14) All fees collected on behalf of the Board and all receipts of every kind and nature, as well as the compensation paid the members of the Board and the necessary expenses incurred by them in the performance of the duties imposed upon them, shall be reported annually to the State Treasurer. All fees and other moneys received by the Board pursuant to the provisions of the General Statutes shall be kept in a separate fund by the treasurer of the Board, to be held and expended only for such purposes as are proper and necessary to the discharge of the duties of the Board and to enforce the provisions of this Chapter. No expense incurred by the Board shall be charged against the State.

(1971, c. 738, ss. 1-3.)

Editor's Note.—

The 1971 amendment increased the fee in the first sentence of subdivision (7) from thirty-five dollars ($35.00) to fifty dollars ($50.00), deleted the former third sentence of subdivision (7), authorizing a reexamination upon payment of a fee of twenty-five dollars ($25.00) in certain circumstances, increased the fee in subdivision (8) from fifteen dollars ($15.00) to twenty-five dollars ($25.00) and rewrote subdivision (14).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (7), (8) and (14) are set out.

Cited in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969).

Chapter 93A.

Real Estate Brokers and Salesmen.

§ 93A-1. License required of real estate brokers and real estate salesmen.—From and after July 1, 1957, it shall be unlawful for any person, partnership, association or corporation in this State to act as a real estate broker or real estate salesman, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate salesman or to advertise or hold himself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Licensing Board (hereinafter referred to as the Board), under the provisions of this chapter. (1957, c. 744, s. 1; 1969, c. 191, s. 1.)

Editor's Note.—

The 1969 amendment inserted "or to advertise or hold himself or themselves out as engaging in or conducting such business" near the middle of the section.

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.—(a) A real estate broker within the meaning of this chapter is any person, partnership, association, or corporation, who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others.

(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; 1969, c. 191, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, inserted "under the supervision of a real estate broker" in subsection (b).

The 1969 amendment inserted "lists or offers to list" near the beginning of subsection (a) and deleted "as a whole or partial vocation" at the end of such subsection.

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

Opinions of Attorney General. — Mr.

Joseph F. Schweidler, N.C. Real Estate Licensing Board, 8/8/69.

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).

Applied in Raab & Co. v. Independence Corp., 9 N.C. App. 674, 177 S.E.2d 337 (1970).

§ 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 members to be appointed by the Governor: Provided, that two 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.

(f) The Board is authorized to expend expense reserve funds as defined in G.S. 93A-3(b) for the purpose of conducting education and information programs relating to the real estate brokerage business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures. (1957, c. 744, s. 3; 1967, c. 281, s. 2; c. 853, s. 1; 1971, c. 86, 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).

The 1971 amendment, effective July 1, 1971, added subsection (f).

As the rest of the section was not changed by the amendments, only subsections (a), (b) and (f) 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 month of 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; 1969, c. 191, s. 3.)

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).

The 1969 amendment substituted "month of" for "months of May or" in the second sentence of subsection (c).

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

Cited in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969).

§ 93A-5. Register of applicants; roster of brokers and salesmen; financial report to Secretary of State.

(b) The secretary-treasurer of the Board shall also keep a current roster showing the names and places of business of all licensed real estate brokers and real estate salesmen, which roster shall be kept on file in the office of the Board and be open to public inspection.

(1969, c. 191, s. 4.)

Editor's Note. — The 1969 amendment rewrote subsection (b).

As subsections (a) and (c) were not changed by the amendment, they are not 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.

(15) Violating any rule or regulation duly promulgated by the Board.

(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.

(c) Records relative to the deposit, maintenance, and withdrawal of the money or other property of his principals shall be properly maintained by a broker and made available to the Board or its authorized representative when the Board determines such records are pertinent to the conduct of the investigation of any specific complaint against a licensee. (1957, c. 744, s. 6; 1967, c. 281, s. 4; c. 853, s. 3; 1969, c. 191, s. 5; 1971, c. 86, s. 2.)

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.

The 1969 amendment added subdivision (15) of subsection (a).

The 1971 amendment, effective July 1, 1971, added subsection (c).

Opinions of Attorney General. — Mr. Joseph F. Schweidler, N.C. Real Estate Licensing Board, 8/20/69.

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-8. Penalty for violation of chapter.

Violation Precludes Recovery of Commissions by Foreign Real Estate Firms.— A foreign real estate firm that has not secured a North Carolina real estate license and a certificate of authority to transact business in this State cannot maintain an action to recover commissions on the lease of real estate in this State. Raab & Co. v. Independence Corp., 9 N.C. App. 674, 177 S.E.2d 337 (1970).

§ 93A-9. Licensing nonresidents. — An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Board, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Board may exempt from the examination prescribed in G.S. 93A-4 a broker or salesman duly licensed in another state if a similar exemption is extended to licensed brokers and salesmen from North Carolina. (1957, c. 744, s. 9; 1967, c. 281, s. 5; 1969, c. 191, s. 6; 1971, c. 86, s. 3.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote this section as previously amended in 1967 and 1969.

Chapter 93B.

Occupational Licensing Boards.

§ 93B-2. Annual reports required; contents; open to inspection.—Each occupational licensing board shall file with the Secretary of State and with the Attorney General an annual financial report, and an annual report containing the following information:

(1) The address of the board, and the names of its members and officers;
(2) The number of persons who applied to the board for examination;
(3) The number who were refused examination;
(4) The number who took the examination;
(5) The number to whom initial licenses were issued;
(6) The number who applied for license by reciprocity or comity;
(7) The number who were granted licenses by reciprocity or comity;
(8) The number of licenses suspended or revoked; and
(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

The reports required by this section shall be open to public inspection. (1957, c. 1377, s. 2; 1969, c. 42.)

Editor's Note.—The 1969 amendment inserted "and with the Attorney General" near the beginning of the section.

§ 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 93D.

North Carolina State Hearing Aid Dealers and Fitters Board.

§ 93D-1. Definitions.—For the purposes of this chapter:

(1) "Board" shall mean the North Carolina State Hearing Aid Dealers and Fitters Board.

(2) "Fitting and selling hearing aids" shall mean the evaluation or measurement of the powers or range of human hearing by means of an audiometer or by other means and the consequent selection or adaptation or sale or rental of hearing aids intended to compensate for hearing loss including the making of an impression of the ear.

(3) "Hearing aid" shall mean any instrument or device designed for or represented as aiding, improving or compensating for defective human hearing and any parts, attachments or accessories of such an instrument or device. (1969, c. 999.)

Editor's Note. — Session Laws 1969, c. 999, was ratified June 24, 1969 and made effective ninety days from ratification.

§ 93D-2. Fitting and selling without license unlawful.—It shall be unlawful for any person to fit or sell hearing aids unless he has first obtained a license or apprentice license from the North Carolina State Hearing Aid Dealers and Fitters Board. (1969, c. 999.)

§ 93D-3. North Carolina State Hearing Aid Dealers and Fitters Board; composition, organization, duties and compensation.—(a) There is hereby created a board whose duty it shall be to carry out the purposes and enforce the provisions of this chapter, and which shall be known as the "North Carolina State Hearing Aid Dealers and Fitters Board." The Board shall be composed of seven members. Four members who have been actively engaged in the fitting and selling of hearing aids for three years shall be appointed by the Governor. These initial appointments are for the following terms: one for one year, one for two years, one for three years and one for four years. All subsequent appointments shall be for terms of four years.

Two members shall be appointed by the Governor from a list of four physicians practicing in North Carolina, specializing in the field of otolaryngology, which list shall be compiled by the Medical Society of North Carolina. These initial appointments shall be for terms of two years and four years respectively. All subsequent appointments shall be for terms of four years.

One member shall be appointed by the Governor from a list of two audiologists residing in North Carolina, which list shall be compiled by the North Carolina

Speech and Hearing Association. This initial appointment shall be for a term of three years. All subsequent appointments shall be for a term of two years.

Vacancies on the Board shall be filled by appointment of the Governor. Appointees shall serve the unexpired term of their predecessor in office and must be appointed from the same category, physician, or hearing aid dealer or audiologist, as their predecessor in office. The members of the Board, before entering their duties, shall respectively take all oaths taken and prescribed for other State officers, in the manner provided by law, which oaths shall be filed in the office of the Secretary of State, and the Board shall have a common seal.

(b) The Board shall choose, at the first regular meeting and annually thereafter, one of its members to serve as president and one as secretary and treasurer. A majority of the Board shall constitute a quorum. The Board shall meet at least once a year, the time and place of the annual meeting and any special meetings to be designated by the president. The secretary and treasurer of the Board shall keep a full record of its proceedings, including a current list of all licensees, which shall at all reasonable times be open to public inspection.

(c) The Board shall:

(1) Authorize all disbursements necessary to carry out the provisions of this chapter;

(2) Supervise and administer qualifying examinations to test and determine the knowledge and proficiency of applicants for licenses;

(3) Issue licenses to qualified persons who apply to the Board;

(4) Obtain audiometric equipment and facilities necessary to carry out the examination of applicants for licenses;

(5) Suspend or revoke licenses and apprentice licenses pursuant to this chapter;

(6) Make and publish rules and regulations (including a code of ethics) which are necessary and proper to regulate the fitting and selling of hearing aids and to carry out the provisions of this chapter;

(7) Exercise jurisdiction over the hearing of complaints, charges of malpractice including corrupt or unprofessional conduct, and allegations of violations of the Board's rules or regulations, which are made against any fitter and seller of hearing aids in North Carolina;

(8) Require the periodic inspection and calibration of audiometric testing equipment of persons who are fitting and selling hearing aids;

(9) In connection with any matter within the jurisdiction of the Board, summon and subpoena and examine witnesses under oath and to compel their attendance and the production of books, papers, or other documents or writings deemed by the Board to be necessary or material to the inquiry. Each summons or subpoena shall be issued under the hand of the secretary and treasurer or the president of the Board and shall have the force and effect of a summons or subpoena issued by a court of record. Any witness who shall refuse or neglect to appear in obedience thereto or to testify or produce books, papers, or other documents or writings required shall be liable to contempt charges in the manner set forth in G.S. 150-17. The Board shall pay to any witness subpoenaed before it the fees and per diem as paid witnesses in civil actions in the superior court of the county where such hearing is held.

(d) Out of the funds coming into the possession of said Board, each member thereof may receive as reimbursement for each day he is actually engaged in the assigned duties of his office, the sum of eight cents (8¢) per mile for travel plus the actual costs of meals and public lodging while away from home, which costs of meals and lodging may not exceed twenty dollars ($20.00) per day. Such expenses shall be paid from the fees and assessments received by the Board under the provisions of this chapter. No part of these expenses or any other expenses of the Board, in any manner whatsoever, shall be paid out of the State treasury. All moneys received in excess of expense allowance and mileage, as above provided, shall be held by the

secretary-treasurer as a special fund for meeting other expenses of the Board and carrying out the provisions of this chapter.

The secretary-treasurer 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.

The Board shall make an annual report of its proceedings to the Governor on the first Monday in June of each year, which report shall contain an account of all moneys received and disbursed by the Board and a complete listing of names and addresses of all licensees. Copies of the report and list of licensees shall be filed in the office of the State Auditor, the Secretary of State, and Attorney General. (1969, c. 999.)

§ 93D-4. Board may enjoin illegal practices.—The Board may, if it finds that any person is violating any of the provisions of this chapter, apply to superior court for a temporary or permanent restraining order or injunction to restrain such persons from continuing such illegal practices. If upon application, it appears to the court that such person has violated or is violating the provisions of this chapter, the court shall issue an order restraining the sale or fitting of hearing aids or other conduct in violation of this chapter. All such actions by the Board for injunctive relief shall be governed by the Rules of Civil Procedure and article 37, chapter 1 of the General Statutes; provided, that injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under the provisions of this chapter. (1969, c. 999.)

Editor's Note. — The Rules of Civil Procedure are found in § 1A-1.

§ 93D-5. Requirements for registration; examinations.—(a) No person shall begin the fitting and selling of hearing aids in this State after the effective date of this chapter until he is issued a license or apprentice license by the Board. Except as hereinafter provided, each applicant for a license shall pay a fee of fifty dollars ($50.00) and shall show to the satisfaction of the Board that he;

(1) Is a person of good moral character,
(2) Is twenty-one years of age or older, provided that, a person who has reached the age of nineteen years or more may be awarded an apprentice license,
(3) Has an education equivalent to a four-year course in an accredited high school,
(4) Is free of contagious or infectious disease.

(b) Except as hereinafter provided, no license shall be issued to a person until he has successfully passed a qualifying examination administered by the Board. (1969, c. 999.)

Editor's Note. — Session Laws 1969, c. 999, was ratified June 24, 1969 and made effective ninety days from ratification.

§ 93D-6. Persons selling in other jurisdictions.—Whenever the Board determines that another state or jurisdiction has requirements at least equivalent to those in effect pursuant to this Chapter for the fitting and selling of hearing aids, and that such state or jurisdiction has a program at least equivalent to the program for determining whether applicants pursuant to this Article are qualified to sell and fit hearing aids, the Board may issue, but is not compelled to issue, licenses to applicants therefor who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicant shall be required to submit to any examination or other procedure required by G.S. 93D-5, except that he shall pay a fee of fifty dollars ($50.00) to the Board upon application. Such applicant must have one full year

of experience satisfactory to the Board before issuance of the license. (1969, c. 999; 1971, c. 1093, s. 2.)

Editor's Note.—The 1971 amendment in the second sentence inserted "submit to" and inserted "other."

§ 93D-7. Persons engaged in the fitting and selling of hearing aids before the passage of this chapter.—Every person engaged in fitting and selling hearing aids upon the effective date of this chapter shall be issued a license by the Board, upon presentation of evidence satisfactory to the Board that he is a person of good moral character, is twenty-one years of age or older, and has been engaged in fitting and selling hearing aids in this State for at least two years prior to the effective date of this chapter, provided such person pays a fee of fifty ($50.00) dollars for the issuance of a license by the Board; and provided he makes application to the Board for such license within sixty days after the effective date of this chapter. Upon payment of an additional five dollars ($5.00), a license certificate shall be issued. (1969, c. 999.)

Editor's Note. — Session Laws 1969, c. 999, was ratified June 24, 1969 and made effective ninety days from ratification.

§ 93D-8. Examination of applicants; issue of license certificate.— (a) Every applicant for a license who is notified by the Board that he has fulfilled the requirements of G.S. 93D-5 (a) excepting those making application pursuant to G.S. 93D-6 and G.S. 93D-7, shall appear at a time, place and before such persons as the Board may designate, to be examined by written and practical tests in order to demonstrate that he is qualified for the fitting and selling of hearing aids. The Board shall give one examination of the type prescribed herein each year at a duly prescribed time and place, which shall be publicized for at least ninety days in advance. Additional examinations may be given at the discretion of the Board. The examination provided in this section shall not include questions requiring a medical or surgical education but shall consist of:

(1) Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:
   a. The basic physics of sound,
   b. The human hearing mechanism, including the science of hearing and the cause and rehabilitation of abnormal hearing and hearing disorders, and
   c. The structure and function of hearing aids.

(2) Tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:
   a. Pure tone audiometry, including air conduction testing and bone conduction testing,
   b. Live voice and recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing,
   c. Effective masking,
   d. Recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy,
   e. Selection and adaption of hearing aids and testing of hearing aids,
   f. Taking earmold impressions, and
   g. Such other skills as may be required for the fitting of hearing aids in the opinion of the Board.

(b) Upon payment of five dollars ($5.00) the Board shall issue a license certificate to each applicant who successfully passes the examination. (1969, c. 999.)

§ 93D-9. Apprenticeship licenses.—(a) Any applicant who has fulfilled the requirements of G.S. 93D-5 (a) may apply to the Board for an apprenticeship license.

(b) Upon receiving an application as provided under G.S. 93D-5 (a) accompanied by a fee of five dollars ($5.00), the Board may issue an apprenticeship license which shall entitle the applicant to fit and sell hearing aids under the supervision of a holder of a regular license.

(c) No apprenticeship license shall be issued by the Board under this section unless the applicant shows to the satisfaction of the Board that he is or will be supervised and trained by a hearing aid fitter and seller who holds a license.

(d) If a person twenty-one years of age or older who holds an apprenticeship license issued under this section does not take the next succeeding examination given after a minimum of one full year of apprenticeship, his apprenticeship license shall not be renewed, except for good cause shown to the satisfaction of the Board.

(e) If a person who holds an apprenticeship license takes and fails to pass the next succeeding examination given after one full year of apprenticeship, the Board may renew the apprenticeship license for a period of time to end thirty days after the results of the examination given next after the date of renewal of said apprenticeship license. In no event shall more than one renewal of apprenticeship license or two examinations for license be permitted. The fee for apprenticeship license renewal shall be twenty-five dollars ($25.00).

(f) The apprenticeship license may be revoked for cause as determined by the Board in its discretion. (1969, c. 999.)

§ 93D-10. Registration and notice.—The Board shall register each person to whom it grants a license or apprentice license. The secretary-treasurer of the Board shall keep a record of the place of business of all licensees and apprentice licensees. Any notice required to be given by the Board to a person holding a license or apprentice license may be given by mailing to him at the last address received by the Board from him. (1969, c. 999.)

§ 93D-11. Annual fees; failure to pay; expiration of license.—Every person who engages in the fitting and selling of hearing aids shall pay to the Board an annual license renewal fee of twenty-five dollars ($25.00). Such payment shall be made prior to the first day of April in each year. In case of default in payment the license shall expire 30 days after notice by the secretary-treasurer to the last known address of the licensee by registered mail. The Board may reinstate an expired license upon the showing of good cause for late payment of fees, upon payment of said fees within 60 days after expiration of the license, and upon the further payment of a late penalty of ten dollars ($10.00). After 60 days after the expiration date, the Board may reinstate the license for good cause shown upon application for reinstatement and payment of the late penalty of ten dollars ($10.00) and renewal fee. (1969, c. 999.)

§ 93D-12. License to be displayed at office.—Every person to whom a license or apprentice license is granted shall display the same in a conspicuous part of his office wherein the fitting and selling of hearing aids is conducted, or shall have a copy of such license or apprentice license on his person and exhibit the same upon request when fitting or selling hearing aids outside of his office. (1969, c. 999.)

§ 93D-13. Discipline, suspension, revocation of licenses and apprentice licenses.—(a) The Board may in its discretion administer the punishment of private reprimand, suspension of license or apprentice license for a fixed period or revocation of license or apprentice license as the case may warrant in their judgment for any violation of the rules and regulations of the Board or for any of the following causes:

(1) Habitual drunkenness
(2) Gross incompetence
(3) Knowingly fitting and selling hearing aids while suffering with a contagious or infectious disease
(4) Commission of a criminal offense indicating professional unfitness
(5) The use of a false name or alias in his business
(6) Conduct involving wilful deceit
(7) Conduct involving fraud or any other business conduct involving moral turpitude
(8) Advertising of a character or nature tending to deceive or mislead the public,
(9) Advertising declared to be unethical by the Board or prohibited by the code of ethics established by the Board,
(10) Permitting another person to use his license or apprentice license, and
(11) For violating any of the provisions of this chapter.

(b) Board action in revoking or suspending a license shall be in accordance with the provisions of G.S. 150-9 through 150-34. Any person whose license has been suspended for any of the grounds or reasons herein set forth, may, after the expiration of ninety days but within two years, apply to the Board to have the same reissued; upon a showing satisfactory to the Board that such reissuance will not endanger the public health and welfare, the Board may reissue a license to such person for a fee of fifty dollars ($50.00) plus five dollars ($5.00) for a certificate of license. If application is made subsequent to two years from date of suspension, reissuance shall be in accordance with the provisions of G.S. 93D-8. (1969, c. 999.)

§ **93D-14. Persons not affected.**—This chapter shall not prevent any person from engaging in the measuring of human hearing for the purpose of selection of hearing aids, provided such person or organization employing such person does not sell hearing aids or accessories thereto, nor shall this chapter apply to any physician licensed to practice medicine or surgery in the State of North Carolina. Nothing in this chapter shall permit a licensee hereunder to perform any practices or services set forth in article 17 of chapter 90 of the General Statutes of North Carolina. (1969, c. 999.)

§ **93D-15. Violation of chapter.**—Any person who violates any of the provisions of this chapter and any person who holds himself out to the public as a fitter and seller of hearing aids without having first obtained a license or apprentice license as provided for herein, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000.00) nor less than five hundred dollars ($500.00) or imprisonment for not more than six months, or both, in the discretion of the court. (1969, c. 999.)

§ **93D-16. Severability.**—If any provision of the chapter shall be declared unconstitutional or invalid, such invalidity shall not affect other provisions or the application of the chapter which can be given effect without the invalid provisions. To this end, the provisions of this chapter are declared to be severable. (1969, c. 999.)

Chapter 94.

Apprenticeship.

§ 94-1. Purpose.

State Government Reorganization.—The Apprenticeship Council was transferred to the Department of Labor by § 143A-71, enacted by Session Laws 1971, c. 864.

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-five thousand dollars ($25,000.00) 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; 1969, c. 1214, s. 5; 1971, c. 912, 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.

The 1969 amendment, effective after July 1, 1969, increased the salary from $20,000 to $22,500.

The 1971 amendment, effective July 1, 1971, increased the salary from $22,500 to $25,000.

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 of 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 3.

Various Regulations.

§ **95-26**: Repealed by Session Laws 1971, c. 56.

§ **95-30**: Repealed by Session Laws 1971, c. 240.

ARTICLE 4A.

Voluntary Arbitration of Labor Disputes.

§ 95-36.1. Declaration of policy.

State Government Reorganization.—The administration of this Article was transferred to the Department of Labor by § 143A-72, enacted by Session Laws 1971, c. 864.

ARTICLE 6.

Separate Toilets for Sexes.

§ 95-50. Punishment for violation of article.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

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.

State Government Reorganization.—The Board of Boiler Rules was transferred to the Department of Labor by § 143A-70, enacted by Session Laws 1971, c. 864.

§ 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 inspection and specifying the maximum pressure under which such boiler or tank may be operated. Such inspection certificate shall be valid for not more than twenty-six (26) months. Certificates shall be posted under glass in the room containing the boiler or tank inspected or in the case of a portable boiler or tank in a metal container to be fastened to the boiler or to be kept in a 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.

§ 95-86. Definition of terms.—As used in this Article:

(1) "Commissioner" means the Commissioner of Labor;
(2) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;
(3) "Employee" includes any individual employed by an employer but shall not include:
   a. Any person employed as a farm laborer or farm employee;
   b. Any person employed in domestic service or in or about a private home or in an eleemosynary institution primarily supported by public funds;
   c. Any person engaged in the activities of an educational, charitable, religious or nonprofit organization where the relationship of employer-employee does not, in fact exist, or where the services rendered to such organizations are on a voluntary basis;

d. Newsboys, shoe-shine boys, caddies on golf courses, baby-sitters, ushers, doormen, concession attendants and cashiers in theaters;
e. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;
f. Any person under the age of 18 in the employ of his father or mother;
g. Any person confined in any penal, corrective, or mental institution of the State or any of its political subdivisions;
h. Employees of boys' and girls' summer camps;
i. Any person under the age of 16, regardless of by whom employed;
j. Those employed in the seafood or fishing industry on a part-time basis or who normally work and are paid for in the amount of work accomplished;
k. Any person who shall have reached his or her sixty-fifth birthday.

(4) "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value: Provided, wages may include the reasonable cost to the employer, as determined by the Commissioner, of furnishing meals and for lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee.

(5) In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of fifty percent (50%) of the applicable minimum wage rate, except that in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Commissioner that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount. (1959, c. 475; 1961, c. 652; 1969, c. 34, s. 2; c. 218; 1971, c. 1231, s. 1.)

Editor's Note.—

The first 1969 amendment, effective July 1, 1969, deleted former paragraph h of subdivision (3), relating to persons receiving tips, relettered the following paragraphs in that subdivision and added subdivision (5).

The second 1969 amendment, effective Jan. 1, 1970, eliminated from paragraph b of subdivision (3) persons employed in or about public or private nursing homes or hospitals, in paragraph d deleted "pin boys in bowling alleys," deleted former paragraph f, relating to persons employed on a part-time basis during the school year, and again relettered the following paragraphs in that subdivision.

The 1971 amendment substituted "18" for "twenty-one (21)" in subdivision (3)f.

§ 95-87. Minimum wages.—Every employer shall pay to each of his employees wages as follows: (a) At a rate not less than one dollar and forty-five cents ($1.45) per hour after July 1, 1971; (b) at a rate not less than one dollar and sixty cents ($1.60) per hour after July 1, 1972. This section shall not apply to part-time employees who work 16 hours or less per week if the establishment where such part-time employees are employed has three or less full-time employees at any one time. (1959, c. 475; 1963, c. 816; 1965, c. 229; 1969, c. 34, s. 1; 1971, c. 138.)

Editor's Note.—

The 1971 amendment, effective July 1, 1971, rewrote this section as previously amended in 1963, 1965 and 1969.

§ 95-88. Certain establishments excluded.

Part-Time Employees Counted in Determining Number of Employees. — See opinion of Attorney General to Honorable Frank Crane, Commissioner of Labor, 41 N.C.A.G. 438 (1971).

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.

Opinions of Attorney General. — Mr. Milton Short, Councilman of the City of Charlotte, 7/25/69.

This section is unconstitutional on its face. Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D.N.C. 1969).

This section is void on its face as an abridgement of freedom of association protected by the First and Fourteenth Amendments of the Constitution of the United States. Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D.N.C. 1969).

Section 95-99 is so related to this section that it cannot survive the invalidation of that section. Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D.N.C. 1969).

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.

Opinions of Attorney General. — Mr. Milton Short, Councilman of the City of Charlotte, 7/25/69; Mr. Robert E. Allen, Attorney, Housing Authority, Greensboro, 9/29/69.

Constitutionality.—This section is a valid and constitutional exercise of the legislative authority of the General Assembly of North Carolina. Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D.N.C. 1969).

Quoted in NLRB v. Randolph Elec Membership Corp., 343 F.2d 60 (4th Cir 1965)

§ 95-99. Penalty for violation of article.

Section Unconstitutional.—This section is so related to § 95-97 that it cannot survive the invalidation of that section. Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D.N.C. 1969).

Stated in NLRB v. Randolph Elec. Membership Corp., 343 F.2d 60 (4th Cir 1965).

ARTICLE 14.

§§ 95-105 to 95-115: Reserved for future codification purposes.

ARTICLE 15.

Passenger Tramway Safety.

§ 95-116. Declaration of policy.—In order to safeguard life, health, property, and the welfare of this State, it shall be the policy of the State of North Carolina to protect its citizens and visitors from unnecessary mechanical hazards in the operation of ski tows, lifts, tramways and related devices to insure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of ski tows, ski lifts and passenger tramways. The primary responsibility for design, construction, maintenance, and inspection rests with the operators of such passenger tramway devices. The State, through the Commissioner of Labor, shall register all ski lift devices and passenger tramways and establish reasonable standards of design and operational practices, and cause to be made such inspections as may be necessary in carrying out this policy. (1969, c. 1021.)

§ 95-117. Definitions.—Each word or term defined in this article has the meaning indicated in this section, unless a different meaning is plainly required by the context.

(1) "Commissioner" means the Commissioner of Labor of the State of North Carolina.

(2) "Industry" means activities of all those persons in the State who own, manage, or direct the operation of passenger tramways.

(3) "Operator" means any person, firm, corporation, or organization which owns, manages, or directs the operation of a passenger tramway. "Operator" may apply to the State or any political subdivision or instrumentality thereof.

(4) "Passenger tramway" means a device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. "Passenger tramway" shall include the following devices:

a. "Chair lift," a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;

b. "J bar, T bar or platter pull," so-called and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

c. "Multicar aerial passenger tramway," a device used to transport passengers in several open or in closed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar device;

d. "Rope tow," a type of transportation which pulls the skiers, riding on skis as the skier grasps the rope manually, or similar devices;

e. "Skimobile," a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar device;

f. "Two-car aerial passenger tramway," a device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar device. (1969, c. 1021.)

§ 95-118. Registration required.—No passenger tramway shall be operated in this State unless it has been registered by the Commissioner of Labor. On or before November 1 in each year, every operator of a passenger tramway shall apply to the Commissioner of Labor, on forms prepared by said Commissioner, for registration of the passenger tramway which such operator owns or manages, or the operation of which he directs. The application shall contain such information as the Commissioner may reasonably require in order for him to determine whether the passenger tramway sought to be registered by such operator comply with the intent of this article and the rules and regulations promulgated by the Commissioner as hereinafter provided. (1969, c. 1021.)

§ 95-119. Registration of passenger tramways.—The Commissioner shall issue to the applying operator without delay a registration certificate for each passenger tramway owned, managed, or the operation of which is directed by such operator when the Commissioner is satisfied:

(1) That the facts stated in the application are sufficient to enable the Commissioner to fulfill his duties under this article; and

(2) That each such passenger tramway sought to be registered complies with

the rules and regulations of the Commissioner promulgated pursuant to the provisions of this article.

(3) In order to satisfy himself that the conditions described in subdivisions (1) and (2) of this section have been fulfilled, the Commissioner may cause to be made such inspections hereinafter described as he may reasonably deem necessary.

(4) When an operator installs a passenger tramway subsequent to November 1, of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the Commissioner shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this article.

(5) Each registration shall expire on October 31, next following the day of issue. Each operator shall cause the registration certificate for each passenger tramway thus registered to be displayed prominently at the place where passengers are loaded thereon. (1969, c. 1021.)

§ **95-120. Powers and duties of the Commissioner.**—In addition to all other powers and duties conferred and imposed upon the Commissioner by this article, the Commissioner shall have and exercise the following powers and duties:

(1) To adopt and enforce reasonable rules and regulations relating to public safety in the construction, operation, and maintenance of passenger tramways. The rules and regulations authorized under this section shall conform as nearly as possible to the standards contained for mechanical engineering aerial passenger tramways safety code as adopted and used by the U.S.A. Standards Institute, B77.1—1960, with addenda B77.1(a)—1963, and B77.1(b)—1965, and as said safety code from tramways may be amended from time to time, and in the formulation of said regulations the Commissioner may use and adopt any other safety code for tramways as issued by recognized scientific and mechanical societies. The said regulations shall not be discriminatory in their application to operators of passenger tramways, and the procedures of the Commissioner shall be as provided in this article;

(2) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the Commissioner, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers and records relevant to any inquiry;

(3) To approve, deny, revoke, and renew the registrations provided for in this article and the procedures of the Commissioner with respect thereto shall be as provided in this article with respect to the issuance of certificates or licenses;

(4) To cause the prosecution and the institution of actions for injunctions of all persons violating the provisions of this article and to incur the necessary expenses thereof;

(5) To cause the seal of the Commissioner of Labor to be affixed to all registrations issued by him, and to employ, within the funds available to him, and prescribe the duties of all such personnel as the Commissioner may deem necessary in the administration of this article. (1969, c. 1021.)

§ **95-121. Inspections and reports.**—The Commissioner may cause to be made such inspections of the construction, operation, and maintenance of passenger tramways as he shall deem to be reasonably necessary. If, as the result of an inspection, it is found that a violation of the Commissioner's rules and regula-

tions exists, or a condition in passenger tramway construction, operation or maintenance exists, which endangers safety of the public, an immediate report shall be made to the Commissioner for appropriate investigation and order. (1969, c. 1021.)

§ **95-122. Emergency shutdown.**—When facts are presented to the Commissioner tending to show that an unreasonable hazard exists in the continued operation of a passenger tramway, and after such verification of said facts as is practical under the circumstances and consistent with the public safety, the Commissioner may by an emergency order require the operator of said tramway forthwith to cease using the same for the transportation of passengers. Such emergency order shall be in writing, signed by the Commissioner, and notice thereof shall be served upon the operator or his agent immediately in control of said passenger tramway by a true copy of such order, with a return being made of such service and endorsed on the original order. Such emergency shutdown shall be effective for a period not to exceed forty-eight (48) hours from the time of service. Immediately after the issuance of an emergency order, the Commissioner shall conduct an investigation into the facts of the case and shall take such action as may be appropriate and as provided by the provisions of this article. (1969, c. 1021.)

§ **95-123. Orders.**—If, after investigation, the Commissioner finds that a violation of any of his rules and regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance which endangers the safety of the public, the Commissioner shall forthwith issue his written order setting forth his findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such orders shall be served upon the operator involved by certified mail, and shall become final, unless the operator shall seek judicial review of said order as hereinafter provided. The Commissioner shall have the power to institute injunctive proceedings in any court of competent jurisdiction of the judicial district in which the passenger tramway is located for the purpose of restraining the operation of said tramway or for compelling compliance with any lawful order of the Commissioner. Any appeal from an order of the Commissioner shall be made in conformance with the article provided for judicial review of decisions of administrative agencies, the same being article 33 of chapter 143 of the General Statutes, as amended. (1969, c. 1021.)

§ **95-124. Suspension of registration.**—If any operator fails to comply with the lawful order of the Commissioner as issued under this article, and within the time fixed thereby, the Commissioner may suspend the registration of the affected passenger tramway for such time as he may consider necessary for the protection of the safety of the public. Any operator who shall be convicted, or enter a plea of guilty or nolo contendere, to operating a passenger tramway which has not been registered by the Commissioner, or after its registration has been suspended by the Commissioner, shall be guilty of a misdemeanor and shall be punished by a fine of not more than fifty dollars ($50.00) per day for each day of the such illegal operations or by imprisonment in the discretion of the court, or both such fine and imprisonment. (1969, c. 1021.)

§ **95-125. Effective date of initial applications.**—This article shall take effect and become operative on July 30, 1969, provided that the initial applications for registration of passenger tramways shall be filed on or before November 1, 1969, and passenger tramways in existence on November 1, 1969, may be operated without registration until final action is taken by the Commissioner on the application for registration thereof. (1969, c. 1021.)

Chapter 96.

Employment Security.

Article 1.

Employment Security Commission.

ARTICLE 1.

Employment Security Commission.

§ 96-1. Title.

Cited in Blue Jeans Corp. v. Amalgamated Clothing Workers of America, 4 N.C. App. 245, 166 S.E.2d 698 (1969).

§ 96-1.1. Change in title of Law and names of Commission and funds.

State Government Reorganization.—The Employment Security Commission was transferred to the Department of Commerce by § 143A-175, enacted by Session Laws 1971, c. 864.

§ 96-2. Declaration of State public policy.

Design of Employment Security Law.—See In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

Strict Construction. — Sections of this chapter imposing disqualifications for its benefits should be strictly construed in favor of the claimant and should not be enlarged by implication or by adding to one disqualifying provision words found only in another. In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

"Through No Fault of Their Own".—See In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

§ 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.

(e) Advisory Councils.—The Governor shall appoint a State Advisory Council and local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and have such members representing the general public as the Governor may designate.

Such councils shall aid the Commission in formulating policies and discussing problems related to the administration of this Chapter, and in assuring impartiality and freedom from political influence in the solution of such problems. Such local advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses. Each member of the State Advisory Council attending actual meetings of such Council shall be paid the same amount per diem for his services as is provided for the members of other State boards, commissions and committees, who receive compensation for their services, 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 mileage and subsistence as allowed to State officials.

(1) Reciprocal Arrangements.—

(1) The Commission is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

a. Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states

1. In which any part of such individual's service is performed or

2. In which such individual has his residence or

3. In which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by the employing unit, approved by the agency charged with the administration of such state's employment security law, pursuant to which the services performed by such individual for such employing unit are deemed to be performed entirely within such state;

b. Combining wage credits.—The Commission shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this Chapter with his wages and employment covered under one or more laws of the federal government and the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for (1) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensations laws, and (2) avoiding the duplicate use of wages and employment by reason of such combining.

c. The services of the Commission as agent may be made available to other states in taking interstate claims for such states.

d. Contributions due under this Chapter with respect to wages for insured work shall for the purposes of G.S. 96-10 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the Commission finds will be fair and reasonable as to all affected interests.

e. The services of the Commission may be made available to such

other agencies to assist in the enforcement and collection of judgments of such other agencies.

f. The services on vessels engaged in interstate or foreign commerce for a single employer, wherever performed, shall be deemed performed within this State or within such other state.

g. Benefits paid by agencies of other states may be reimbursed to such agencies in cases where services of the claimant were "employment" under this Chapter and contributions have been paid by the employer to this agency on remuneration paid for such services; provided the amount of such reimbursement shall not exceed the amount of benefits such claimant would have been entitled to receive under the provisions of this Chapter.

(2) Reimbursements paid from the fund pursuant to subparagraphs b and c of subdivision (1) of this subsection shall be deemed to be benefits for the purpose of G.S. 96-6, 96-9 and 96-12. The Commission is authorized to make to other states or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision (1) of this subsection.

(3) To the extent permissible under the laws and Constitution of the United States, the Commission is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the Employment Security Law of this State or under a similar law of such government.

(n) The cause shall be entitled "State of North Carolina on Relationship of the Employment Security Commission of North Carolina against (here insert name of appellant)," and if there are exceptions to any facts found by the Commission it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions except those described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are prescribed for the trial of other civil causes. By consent of all parties the appeal may be held and determined at chambers before any judge of a district in which the appellant either resides, maintains a place of business or conducts business, or said appeal may be heard before any judge holding court therein, or in any district in which the appellant either resides, maintains a place of business or conducts business. Either party may appeal to the appellate division from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that if an appeal shall be taken on behalf of the Employment Security Commission of North Carolina it shall not be required to give any undertaking or make any deposit to secure the cost of such appeal and such court may advance the cause on its docket so as to give the same a speedy hearing.

(o) The decision or determination of the Commission when docketed in the office of the clerk of the superior court of any county and when properly indexed and cross-indexed shall have the same force and effect as a judgment rendered by the superior court, and if it shall be adjudged in the decision or determination of the Commission that any employer is indebted to the Commission for contributions, penalties and interest or either of the same, then said judgment shall constitute a lien upon any realty owned by said employer in the county only from the date of docketing of such decision or determination in the office of the clerk of the superior court and upon personalty owned by said employer in said county only from the date of levy on such personalty, and upon the execution thereon no homestead or personal property exemptions shall be allowed; provided, that nothing herein shall affect any rights accruing to the Commission under G.S. 96-10. The provisions of this section, however, shall not have the effect of releasing any liens for contributions, penalties or interest, or either of the same, imposed by

other law, nor shall they have the effect of postponing the payment of said contributions, penalties or interest, or depriving the said Employment Security Commission of North Carolina of any priority in order of payment provided in any other statute under which payment of the said contributions, penalties and interest or either of the same may be required. The superior court or any appellate court shall have full power and authority to issue any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of said decision or determination of the Commission or to collect any amount of contribution, penalty or interest adjudged to be due the Commission by said decision or determination. In case of an appeal from any decision or determination of the Commission to the superior court or from any judgment of the superior court to the appellate division all proceedings to enforce said judgment, decision, or determination shall be stayed until final determination of such appeal but no proceedings for the collection of any amount of contribution, penalty or interest due on same shall be suspended or stayed unless the employer or party adjudged to pay the same shall file with the clerk of the superior court a bond in such amount not exceeding double the amount of contribution, penalty, interest or amount due and with such sureties as the clerk of the superior court deems necessary conditioned upon the payment of the contribution, penalty, interest or amount due when the appeal shall be finally decided or terminated.

(1969, c. 44, s. 63; c. 575, ss. 1, 2; 1971, c. 673, ss. 1, 2.)

Editor's Note.—

The first 1969 amendment substituted "appellate division" for "Supreme Court" in the last sentence of subsection (n) and in the fourth sentence of subsection (o).

The second 1969 amendment rewrote the last sentence of subsection (e) and also substituted "appellate division" for "Supreme Court" in the last sentence of subsection (n).

The 1971 amendment rewrote paragraphs b and c of subdivision (1) of subsection (l), deleted former paragraphs g, h, and j, and relettered former paragraph i as g in the same subdivision. The amendment also substituted "subparagraphs b and c" for "paragraph c" near the beginning of subdivision (2) of subsection (l).

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

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).

§ **96-6. Unemployment insurance fund.**—(a) Establishment and Control. —There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered by the Commission exclusively for the purposes of this Chapter. This fund shall consist of:

(1) All contributions collected under this Chapter, together with any interest earned upon any moneys in the fund;

(2) Any property or securities acquired through the use of moneys belonging to the fund;

(3) All earnings of such property or securities;

(4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;

(5) All moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as amended, (U.S.C.A. Title 42, sec. 1103 (a)).

(6) All moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970.

(7) Reimbursement payments in lieu of contributions.

All moneys in the fund shall be commingled and undivided.

(b) Accounts and Deposit.—The State Treasurer shall be ex officio the treasurer and custodian of the fund who shall disburse such fund in accordance with the directions of the Commission and in accordance with such regulations as the Commission shall prescribe. He shall maintain within the fund three separate accounts:

(1) A clearing account,
(2) An unemployment trust fund account, and
(3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded immediately to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in G.S. 143-3.2 under the requisition of the Commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section nine hundred and four of the Social Security Act, as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment insurance fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the unemployment insurance fund shall be deposited in said fund.

(c) Withdrawals.—Moneys shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits (including extended benefits) and in accordance with regulations prescribed by the Commission. The Commission shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the accounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon as provided in G.S. 143-3.2 and requisitioned by the Commission for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to approval of the Budget Bureau or any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be issued as provided in G.S. 143-3.2 as requisitioned by the chairman of the Commission or a duly authorized agent of the Commission for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

(1969, c. 575, s. 3; 1971, c. 673, ss. 3, 4.)

Editor's Note.—

The 1969 amendment substituted the present last three sentences of subsection (b) for the former last two sentences, which provided that the treasurer should give a separate bond. The amendatory act was ratified May 22, 1969, and made effective on ratification.

The 1971 amendment added subdivisions (6) and (7) to subsection (a) and inserted "(including extended benefits)" in the first sentence of subsection (c).

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

ARTICLE 2.

Unemployment Insurance Division.

§ 96-8. Definitions.—As used in this Chapter, unless the context clearly requires otherwise:

(5) "Employer" means:

a. Prior to January 1, 1972, any employing unit which within the current or preceding calendar year and which in each of 20 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). With respect to employment on and after January 1, 1972, "employer" means any employing unit which (a) within the current or preceding calendar year, and which for some portion of a day in each of 20 different calendar weeks within such calendar year (whether or not such weeks are or were consecutive), has or had in employment one or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week); or (b) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars ($1,500) or more. Provided further, for the purpose of this paragraph, "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 G.S. 96-4, and an agency charged with the administration of any other state or federal employment security law. Provided further, for the purpose of this paragraph, "week" means a period of seven consecutive calendar days, and when a calendar week falls partly within each of two calendar years, the days of that week up to January 1 shall be deemed one calendar week, and the days beginning January 1 another such week.

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 G.S. 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 G.S. 96-11(a), to the contrary notwithstanding, any employ-

ing 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 60 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 G.S. 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 60 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 G.S. 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 G.S. 96-11, ceased to be an employer subject to this Chapter; or

e. For the effective period of its election pursuant to G.S. 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; or which, as a condition for approval of this Chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this Chapter; or any employing unit required to be covered by the Federal Unemployment Tax Act; provided, that such employer, notwithstanding the provisions of G.S. 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. Prior to January 1, 1972, any employing unit with its principal place of business located outside of the State of North Carolina, which engaged in business within the State of North Carolina, and which, during any period of 12 consecutive months, has in employment four or more individuals in as many as 20 different weeks shall be deemed to be an employer and subject to the other provisions of this Chapter; provided that on and after January 1, 1972, such employing unit has in employment one or more individuals for some portion of a day in as many as 20 different calendar weeks in any period of 12 consecutive months or has had in employment and paid for service wages in any quarter in 12 consecutive calendar months in the amount of one thousand five hundred dollars ($1,500) or more shall be deemed to be an employer 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.

j. Notwithstanding any other provision of this Chapter, and on and after January 1, 1972, "employer" means any institution of higher education or state hospital located in this State which is an agency or instrumentality of this State, or which is owned or operated by the State or an instrumentality of this State (or by this State and one or more states or their instrumentalities), provided such employing unit, in each of 20 different calendar weeks within the current or preceding calendar year (whether or not such weeks are or were consecutive) has or had in employment one or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), or in any calendar quarter in either the current or preceding calendar year paid for services in employment wages of one thousand five hundred dollars ($1,500) or more. Provided further, for the purposes of this section, schools which are not institutions of higher education are exempt.

k. Notwithstanding any other provision of this Chapter, and on and after January 1, 1972, "employer" means any nonprofit organization or a group of organizations (hereafter, where the words "nonprofit organization" are used in this Chapter, it shall in-

clude a group of nonprofit organizations), corporations, any community chest, fund, or foundation which are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals as set out in section 501 (c) (3) of the Internal Revenue Code of 1954, that are exempt from income tax under section 501(a) of the Internal Revenue Code of 1954, provided such employing unit for some portion of a day in each of 20 different calendar 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).

l. For the purposes of paragraphs j and k, "institution of higher education" means an educational institution in this State which (a) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such certificate; (b) is legally authorized in this State to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree or a program of training to prepare students for gainful employment in a recognized occupation; (d) is a public or other nonprofit institution; and (e) notwithstanding any of the foregoing provisions of this subsection, all universities, colleges, community colleges, and technical institutes in this State are institutions of higher education for the purposes of this section.

For the purposes of these paragraphs, "hospital" means an institution licensed by the State Department of Mental Health as authorized under Chapter 122 of the General Statutes of North Carolina, and an institution licensed by the North Carolina Medical Care Commission as authorized under Chapter 131 of the General Statutes of North Carolina.

(6) a. "Employment" means service performed prior to January 1, 1949, which was employment as defined in this Chapter prior to such date, and any service performed after December 31, 1948, including service in interstate commerce, except employment as defined in the Railroad Retirement Act and the Railroad Unemployment Insurance Act, performed for wage or under any contract of hire, written or oral, express or implied, in which the relationship of the individual performing such service and the employing unit for which such service is rendered is, as to such service, the legal relationship of employer and employee. Provided, however, the term "employee" includes an officer of a corporation, but such term does not include (i) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (ii) any individual (except an officer of a corporation) who is not an employee under such common-law rules. An employee who is on paid vacation or is on paid leave of absence due to illness or other reason shall be deemed to be in employment irrespective of the failure of such individual to perform services for the employing unit during such period.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this State if:
   1. The service is localized in this State; or
   2. The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.
   3. The service, wherever performed, is within the United States, the Virgin Islands or Canada; such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada; and the place from which the service is directed or controlled is in this State.

c. Services performed within this State but not covered under paragraph b of this subdivision shall be deemed to be employment subject to this Chapter, if contributions are not required and paid with respect to such services under an employment security law of any other state or of the federal government.

d. Services not covered under paragraph b of this subdivision, and performed entirely without this State, with respect to no part of which contributions are required and paid under an employment security law of any other state or of the federal government, shall be deemed to be employment subject to this Chapter if the individual performing such service is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Chapter, and services covered by an election duly approved by the Commission in accordance with an arrangement pursuant to subsection (1) of G.S. 96-4 shall be deemed to be employment during the effective period of such election.

e. Service shall be deemed to be localized within a state if:
   1. The service is performed entirely within such state; or
   2. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

f. The term "employment" shall include:
   1. Services covered by an election pursuant to G.S. 96-11, subsection (c), of this Chapter; and
   2. Services covered by an election duly approved by the Commission in accordance with an arrangement pursuant to G.S. 96-4, subsection (1), of this Chapter during the effective period of such election.
   3. Any service of whatever nature performed by an individual for an employing unit on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if such individual is employed on and in

connection with such vessel when outside the United States: Provided, such service is performed on or in connection with the operations of an American vessel operating on navigable waters within or within and without the United States and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State: Provided further, that this subparagraph shall not be applicable to those services excluded in subdivision (6), paragraph g, subparagraph 6 of this section.

4. Any service of whatever nature performed after December 31, 1961, by an individual for an employing unit on or in connection with an American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the aircraft it touches at a port in the United States, if such individual is employed on and in connection with such aircraft when outside the United States; provided such service is performed on or in connection with the operations of an American aircraft and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.
5. Notwithstanding any other provision of this Chapter, "employment" shall include on and after January 1, 1972, any individual who performs services irrespective of whether the master-servant relationship exists, for remuneration for any employing unit:
   (a) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk) or laundry or dry-cleaning services, for his principal;
   (b) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations if the contract of services contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employment" under the provisions of this subsection if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

6. Service of an individual who is a citizen of the United States, performed outside of the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraphs (b) or (e) of this subsection or the parallel provisions of another state's law), if:
   (i) the employer's principal place of business in the United States is located in this State; or
   (ii) the employer has no place of business in the United States, but
      (I) the employer is an individual who is a resident of this State; or
      (II) the employer is a corporation which is organized under the laws of this State; or
      (III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any other state; or
   (iii) none of the criteria of divisions (i) and (ii) of this subparagraph is met but the employer has elected coverage in this State, or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.
   (iv) an "American employer," for the purposes of this paragraph, means a person who is:
      (I) an individual who is a resident of the United States; or
      (II) a partnership if two thirds or more of the partners are residents of the United States; or
      (III) a trust, if all of the trustees are residents of the United States; or
      (IV) a corporation organized under the laws of the United States or of any state.
      (V) for the purposes of this subparagraph, United States includes all the states, the District of Columbia, and the Commonwealth of Puerto Rico.

g. The term "employment" shall not include:
   1. Services performed in the employ of this State, or of any political subdivision thereof, or any instrumentality of this State or its political subdivisions except from and after January 1, 1972, services performed for employers as defined in G.S. 96-8(5)j, and G.S. 96-11(c)(3), and except as otherwise provided in this Chapter.
   2. Except with respect to service performed for an employer as defined in G.S. 96-8(5)j, service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States. From and after March 10, 1941, service performed in the employ of the United States

government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Chapter, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this Chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, that if this State shall not be certified for any year by the Secretary of Labor under section 3304 of the Federal Internal Revenue Code of 1954, the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in G.S. 96-10(e) with respect to contributions erroneously collected.

3. Service with respect to which unemployment insurance is payable under an employment security system established by an act of Congress: Provided, that the Commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in G.S. 96-4(b) for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Chapter, acquired rights to unemployment insurance under act of Congress, or who have, after acquiring potential rights to unemployment insurance, under such act of Congress, acquired rights to benefits under this Chapter.

4. Agricultural Labor.—Prior to January 1, 1972, for the purposes of this Chapter, the term "agricultural labor" includes all services performed: (i) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife; (ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (iii) in connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended. (46 Stat. 1550, sec. 3, 12 U.S.C. 1141j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and

storing water for farming purposes; or (iv) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity, but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subparagraph, the term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

Provided, on and after January 1, 1972, for the purposes of this Chapter, the term "agricultural labor" includes all services performed: (1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife; (2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (3) in connection with the production or harvesting of crude gum (oleoresin) from a living tree, and the following products if processed by the original producer of crude gum from which derived; gum spirits of turpentine and gum resin, or in connection with the ginning of cotton or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; or (4) (A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one half of the commodity with respect to which such service is performed; (B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in performance of service described in subparagraph (A), but only if such operators produced more than one half of the commodity with respect to which such service is performed. (C) The provisions of subparagraphs (A) and (B) shall not be

deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; (D) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

5. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;
6. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if the individual is performing services on and in connection with such vessel or aircraft when outside the United States; or, service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by such individual as an ordinary incident to any such activity), except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (ii) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States).
7. Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;
8. Service performed prior to January 1, 1972, shall not include service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which is exempt from income tax under section 501 (a), Internal Revenue Code of 1954.
9. Service performed on and after March 10, 1941, by an individual for an employing unit or an employer as an insurance agent or as an insurance solicitor or as a securities salesman if all such service performed by such individual for such employing unit or employer is performed for remuneration solely by way of commission; and service performed on and after January 1, 1959, by an individual during any calendar quarter for an employing unit or an employer as an insurance agent or as an insurance solicitor, or as a securities salesman, if all such service performed during such calendar quarter by such

individual for such employing unit or employer is performed for remuneration solely by way of commission; services performed by an individual for an employing unit as a real estate agent or real estate salesman, provided, that such real estate agent or salesman is compensated solely by way of commission.

9a. Service performed by an individual for an employing unit as a real estate agent or a real estate salesman as defined in G.S. 93-A(2) [G.S. 93A-2], provided, that such real estate agent or salesman is compensated solely by way of commission and is authorized to exercise independent judgment and control over the performance of his work.

10. Services performed in employment as a newsboy selling or distributing newspapers or magazines on the street or from house to house.

11. Except as provided in paragraph a of subdivision (5) of this section, service covered by an election duly approved by the agency charged with the administration of any other state or federal employment security law in accordance with an arrangement pursuant to subsection (1) of G.S. 96-4 during the effective period of such election.

12. Notwithstanding any of the other provisions of this subsection, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment insurance fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this Chapter.

13. Casual labor not in the course of the employing unit's trade or business.

14. Service performed after December 31, 1961, in any calendar quarter in the employ of any organization exempt from income tax under the provisions of section 501 (a) of the Internal Revenue Code of 1954 (other than an organization described in section 401 (a) of said Internal Revenue Code of 1954) or under section 521 of the Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars ($50.00).

15. Service performed after December 31, 1971, in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance.

16. Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational

institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

17. For the purposes of paragraphs j and k [of subdivision (5) of this section], the term "employment" does not apply to services performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) in the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training. Service performed after December 31, 1971, by an inmate for a hospital in a State prison or other State correctional institution or by a patient in any other state-operated hospital, and services performed by patients in a hospital operated by a nonprofit organization shall be exempt.
18. Service performed after December 31, 1971, in the employ of a hospital, if such service is performed by a patient of such hospital.

(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 the equivalent of 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 respect to which he is receiving, has received, or will receive, as a result of his separation from employment, remuneration in 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.

(14) "Week" means such period of seven consecutive calendar days as the Commission may by regulations prescribe.

(17) a. As to claims filed on or after July 1, 1965 and prior to August 1, 1969, 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 G.S. 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 percent (20%) of the minimum required base period earnings for his assigned weekly benefit amount as shown in the applicable table in G.S. 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 G.S. 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.

b. As to claims filed on and after August 1, 1969, 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 G.S. 96-12 and, in addition, must have been paid wages in other than the high quarter of his base period equal to at least thirty percent (30%) of the minimum required base period earnings for his assigned weekly benefit amount as shown in the applicable table in G.S. 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 G.S. 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.

(22) Average Weekly Insured Wage.—"Average weekly insured wage" is the quotient obtained by dividing the total of the wages, as defined in G.S. 96-8(12) and (13), reported by all insured employers by the monthly average in insured employment under this Chapter during the immediately preceding calendar year and further dividing the quotient obtained by 52 to obtain a weekly rate. (For this computation the data as released annually in the Employment Security Commission's publication "North Carolina Insured Employment and Wage Payment" shall be used). The quotient thus obtained shall be deemed to be the average weekly wage for such year. (Ex. Sess. 1936, c. 1, s. 19; 1937, c. 448, s. 5; 1939, c. 27, ss. 11-13; c. 52, ss. 6, 7; c. 141; 1941, cc. 108, 198; 1943, c. 377, ss. 31-34; c. 552, ss. 1, 2; 1945, c. 522, ss. 5-10; c. 531, ss. 1, 2; 1947, c. 326, ss. 7-12; c. 598, ss. 1, 5, 8; 1949, c. 424, ss. 3-8½; cc. 523, 863; 1951, c. 322, s. 1; c. 332, ss. 2, 3, 18; 1953, c. 401, ss. 1, 7-11; 1955, c. 385, ss. 3, 4; 1957, c. 1059, ss. 2-4; 1959, c. 362, ss. 2-6; 1961, c. 454, ss. 4-15; 1965, c. 795, ss. 2-5; 1969, c. 575, ss. 4-6, 15; 1971, c. 367; c. 673, ss. 5-13; c. 863; c. 1231, s. 1.)

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).

The 1969 amendment inserted "the equivalent of" near the beginning of paragraph b of subdivision (10), deleted "or periods" following "period" and "ending at midnight" following "days" in subdivision (14) and added subdivision (22). The amendment also rewrote paragraph a of subdivision (17) and substituted "and after August 1, 1969" for "or after July 1, 1965" at the beginning of paragraph b of subdivision (17) and "thirty percent (30%)" for "twenty percent (20%)" in the second sentence of paragraph b of subdivision (17) and "(4)" for "(3)" at the end of the third sentence of that paragraph.

The first 1971 amendment added clause 9a to paragraph g of subdivision (6).

The second 1971 amendment, in subdivision (5), rewrote paragraph a, added, immediately preceding the proviso in paragraph f, the language beginning "or which, as a condition for approval" and ending "covered by the Federal Unemployment Tax Act," rewrote paragraph g and added paragraphs j, k, and l. In subdivision (6), the second 1971 amendment added clause 3 of paragraph b and clauses 5 and 6 of paragraph f, and in paragraph g, rewrote clause 1, added "Except with respect to service performed for an employer as defined in G.S. 96-8(5)j" at the beginning of clause 2 and "Prior to January 1, 1972" at the beginning of clause 4, added the last paragraph of clause 4, rewrote clause 8, added to clause 9 the provision as to service performed for an employing unit as a real estate agent or salesman, eliminated former clauses 10 and 11, relating to certain services performed for building and loan or federal savings and loan associations and fraternal benefit societies, orders or associations, redesignated former clauses 12 through 15 as 10 through 13 and former clauses 17 and 18 as 14 and 15, adding the language beginning "or which as a condition" to present clause 12 and the provisions as to the spouse of a student to present clause 15 and eliminated former clause 16, relating to services performed in the employ of a nationally recognized veterans' organization, and added present clauses 16, 17 and 18. In subdivision (17), the second 1971 amendment substituted "G.S. 96-12(b)(3)" for "G.S. 96-12(b)(4)" at the end of the next-to-last sentences of paragraphs a and b.

The third 1971 amendment deleted "after July 1, 1957," preceding "by an individual for an employing unit as a real estate agent" near the end of clause 9 of paragraph g of subdivision (6).

The fourth 1971 amendment substituted "18" for "21" in clause 7 of paragraph g of subdivision (6).

Only the introductory paragraph and the subdivisions affected by the amendments are set out.

§ 96-9. Contributions.—(a) Payment.—

(1) Except as provided in subsection (d) hereof, on and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Chapter, with respect to wages for employment (as defined in G.S. 96-8(6)). Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided that, on and after July 1, 1941, contributions shall be paid for each calendar quarter with respect to wages paid in such calendar quarter for employment after December 31, 1940. Contributions shall become due on and shall be paid on or before the last day of the month following the close of the calendar quarter in which such wages are paid and such contributions shall be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided, further, that if the Commission shall be advised by its duly authorized officers or agents that the collection of any contribution under any provision of this Chapter will be jeopardized by delay, the Commission may, whether or not the time otherwise prescribed by law for making returns and paying such tax has expired, immediately assess such contributions (together with all interest and penalties, the assessment of which is provided for by law). Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Commission for the payment thereof. Upon failure or refusal to pay such contributions, penalties, and interest, it shall be lawful to make collection thereof as provided by G.S. 96-10 and subsections thereunder and such collection shall be lawful without regard to the due date of contributions herein prescribed, provided, further, that nothing in this paragraph shall be construed as permitting any refund of contributions heretofore paid under the law and regulations in effect at the time such contributions were paid.

(2) In the payment of any contributions a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) Benefits paid employees of this State shall be financed and administered in accordance with the provisions and conditions of G.S. 96-9(d) required for nonprofit organizations; except as provided by suitable regulations which may be adopted by the Commission. The Department of Administration shall make an election with respect to financing all such benefits.

(4) Benefits paid employees of political subdivisions of this State as defined in G.S. 96-11(c)(3) shall be financed and administered on a reimbursement basis in accordance with the provisions and conditions of G.S. 96-9(d).

(5) For the purposes of this section, the term "wages" shall not include that part of the remuneration which, after remuneration equal to three thousand dollars ($3,000) has become payable or paid to an individual by an employer with respect to employment during the calendar year 1960 and during any year thereafter through the calendar year 1971: Provided that on and after January 1, 1960, for the purpose of this section, the term "wages" shall not include that part of remuneration in excess of three thousand dollars ($3,000) paid to an individual by

an employer during any calendar year prior to 1972 for employment irrespective of the year in which such employment occurred.

On and after January 1, 1960, and prior to January 1, 1972, for the purposes of this section, "wages" shall not include, and no contributions shall be paid on that part of remuneration earned by an individual in this State, which, when added to wages previously earned by such individual in another state or states, exceeds the sum of three thousand dollars ($3,000), and the employer has paid contributions to such other state or states on the wages earned therein by such individual during the calendar year applicable. This provision shall be applicable only to wages earned by such individual in the employ of one and the same employer.

On and after January 1, 1960, and prior to January 1, 1972, for the purposes of this section, "wages" shall not include and no contributions shall be paid on that part of remuneration earned by an individual in the employ of a successor employer, which when added to remuneration previously earned by such individual in the employ of the predecessor employer exceeds the sum of three thousand dollars ($3,000) in the calendar year in which the successor acquired the organization, trade, or business of the predecessor as provided in G.S. 96-8(5)b; provided, however, such individual was an employee of the predecessor at the time of the acquisition of the business by the successor and was taken over by the successor as a part of the organization acquired; provided further, that the predecessor employer has paid contributions on the earnings of such individual while in his employ during such year, and the account of the predecessor is transferred to the successor as provided in G.S. 96-9(c)(4)a.

For the purposes of this section, on and after January 1, 1972, the term "wages" shall not include that part of remuneration which, after remuneration equals to four thousand two hundred dollars ($4,200), has been paid to an individual by an employer with respect to employment during the calendar year 1972 and any year thereafter.

On and after January 1, 1972, for the purposes of this section, "wages" shall not include, and no contributions shall be paid on that part of remuneration earned by an individual in this State, which, when added to wages previously earned by such individual in another state or states, exceeds the sum of four thousand two hundred dollars ($4,200), and the employer has paid contributions to such other state or states on the wages earned therein by such individual during the calendar year applicable. This provision shall be applicable only to wages earned by such individual in the employ of one and the same employer.

On and after January 1, 1972, for the purposes of this section, "wages" shall not include, and no contributions shall be paid on that part of remuneration earned by an individual in the employ of a successor employer, which when added to remuneration previously earned by such individual in the employ of the predecessor employer, exceeds the sum of four thousand two hundred dollars ($4,200), in the calendar year in which the successor acquired the organization, trade, or business of the predecessor as provided in G.S. 96-8(5)b; provided, however, such individual was an employee of the predecessor and was taken over by the successor as a part of the organization acquired; provided further, that the predecessor employer has paid contributions on the earnings of such individual while in his employ during such year, and the account of the predecessor is transferred to the successor as provided in G.S. 96-9(c)(4)a.

(b) Rate of Contributions.—

(1) Except as provided in subsection (d) hereof, 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) percent 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 36 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 G.S. 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 G.S. 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 36 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 G.S. 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 prior to January 1, 1970, 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 12-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: As Much As	But Less Than	Applicable 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. The foregoing rates shall be assigned to eligible employers with respect to insured taxable wages applicable to all periods prior to January 1, 1970, in accordance with the foregoing Fund Ratio Schedule and Experience Rating Formula.

c. The applicable schedule of rates for the calendar years 1970 and 1971 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, August 1, is divided by the total amount of the taxable payroll of all subject employers for the 12-month period ending June 30 preceding such com-

putation date. Schedule A,B,C,D,E,F,G,H, or I 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: As Much As	But Less Than	Applicable Schedule
———	3.5%	A
3.5%	4.5%	B
4.5%	5.5%	C
5.5%	6.5%	D
6.5%	7.5%	E
7.5%	8.5%	F
8.5%	9.5%	G
9.5%	10.5%	H
10.5% and in excess thereof		I

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,H, or I 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	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
———	1.4%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5
1.4%	1.6%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3
1.6%	1.8%	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1
1.8%	2.0%	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9
2.0%	2.2%	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7
2.2%	2.4%	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5
2.4%	2.6%	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3
2.6%	2.8%	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1
2.8%	3.0%	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9
3.0%	3.2%	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7
3.2%	3.4%	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5
3.4%	3.6%	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4
3.6%	3.8%	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3
3.8%	4.0%	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2
4.0%	4.2%	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1
4.2%	4.4%	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1
4.4% and in excess thereof		0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1	0.1

d. The applicable schedule of rates for the calendar year 1972 and thereafter shall be determined by the fund ratio resulting when the total amount available for benefits in the unemployment in-

surance fund, as of the computation date, August 1, is divided by the total amount of the taxable payroll of all subject employers for the 12-month period ending June 30 preceding such computation date. Schedule A,B,C,D,E,F,G,H, or I 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: As Much As	But Less Than	Applicable Schedule
———	2.5%	A
2.5%	3.5%	B
3.5%	4.5%	C
4.5%	5.5%	D
5.5%	6.5%	E
6.5%	7.5%	F
7.5%	8.5%	G
8.5%	9.5%	H
9.5% and in excess thereof		I

Variations from the standard rate of contributions shall be determined and assigned with respect to the calendar year 1972 and thereafter, 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,H, or I 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	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
———	0.6%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5
0.6%	0.8%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3
0.8%	1.0%	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1
1.0%	1.2%	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9
1.2%	1.4%	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7
1.4%	1.6%	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5
1.6%	1.8%	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3
1.8%	2.0%	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1
2.0%	2.2%	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9
2.2%	2.4%	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7
2.4%	2.6%	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5
2.6%	2.8%	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4
2.8%	3.0%	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3
3.0%	3.2%	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2
3.2%	3.4%	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1
3.4%	3.6%	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1
3.6% and in excess thereof		0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1	0.1

New rates shall be assigned to eligible employers effective January 1, 1972, and each January 1 thereafter in accordance with the foregoing Fund Ratio Schedule and Experience Rating Formula.

e. 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 G.S. 96-9(b)(3)c of the law as such existed prior to June 3, 1965.

f. 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.

g. 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 30 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.

h. 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) Except as provided in subsection (d) hereof, 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[g], 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 percent (80%) of the amount of such voluntary contribution. The Commission shall credit the account of each employer in an amount equal to eighty percent (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 12 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.

c. Any benefits paid to any claimant who is attending a vocational school or training program as provided in G.S. 96-13(3) shall not be charged to the account of the base period employer(s).

(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 G.S. 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 60 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 G.S. 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 G.S. 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 60 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 percent (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 G.S. 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 G.S. 96-9(b)(2) of this Chapter.

(d) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this paragraph. For the purposes of this paragraph, a nonprofit organization is an organization (or group of organizations)

described in section 501 (c) (3) of the United States Internal Revenue Code of 1954 which is exempt from income tax under section 501 (a) of said Code.

(1) a. Any nonprofit organization which becomes subject to this Chapter on or after January 1, 1972, shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this paragraph to pay the Commission for the Unemployment Insurance Fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin within a benefit year established during the effective period of such election.

b. Any nonprofit organization which is or becomes subject to this Chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than four calendar years beginning with the date on which subjectivity begins by filing a written notice of its election with the Commission not later than 30 days immediately following the date of written notification of the determination of such subjectivity. If such election is not made as set forth herein, no election can be made until after four calendar years have elapsed under the contributions method of payment.

c. Any nonprofit organization which makes an election in accordance with subparagraph b of this paragraph will continue after such four calendar years to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election not later than 30 days prior to the next January 1, effective on such January 1.

d. Any nonprofit organization which has been paying contributions under this Chapter for a period of at least four consecutive calendar years subsequent to January 1, 1972, may elect to change to a reimbursement basis by filing with the Commission not later than 30 days prior to the next January 1 a written notice of election to become liable for payments in lieu of contributions, effective on such January 1. Such election shall not be terminable for a period of four calendar years. In the event of such an election, the account of such employer shall be closed and shall not be used in any future computation of such employer's contribution rate in any manner whatsoever.

e. The Commission, in accordance with such regulations as it may adopt, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this subparagraph and shall be processed as provided herein.

a. Quarterly contributions and wage reports and advance payments shall be submitted to the Commission quarterly under the same conditions and requirements of G.S. 96-9 and 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on such reports; provided that such advance payments shall become effective only with respect to the first four thousand two hundred dollars ($4,200) in wages paid in a calendar year on and after July 1,

1972. Collection of such advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

b. The Commission shall establish a separate account for each such employer and such account shall be charged, credited, and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full and voluntary contributions are not applicable.

c. Benefits paid shall be charged to the employer's account in accordance with G.S. 96-9(c)(2)a; provided that the noncharging of benefits set forth in G.S. 96-9(c)(2)b shall not apply; provided further, irrespective of any other provisions of this Chapter, all benefits paid shall be charged to the employer's account as provided herein, and no benefits paid shall be noncharged, except an amount equal to fifty percent (50%) of extended benefits paid. Any such benefits paid and later determined to be overpayments shall be credited to the employer's account only if recovered.

d. As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each such employer's account and shall furnish him with a statement of all charges and credits thereto.

As of the second computation date (August 1) following the effective date of liability and as of each computation date thereafter, any credit balance remaining in the employer's account (after all applicable postings) in excess of whichever is the greater (a) benefits charged to such account during the 12 months ending on such computation date, or (b) one percent (1%) of taxable wages for the 12 months ending on June 30 preceding such computation date shall be refunded. Any such refund shall be made prior to February 1 following such computation date.

Should the balance in such account not equal that requiring a refund, the employer shall upon notice and demand for payment mailed to his last-known address pay into his account an amount that will bring such balance to the minimum required for a refund. Such amount shall become due on or before the 10th day following the mailing of such notice and demand for payment. Any such amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Upon a change in election as to the method of payment from reimbursement to contributions, or upon termination of coverage and after all applicable benefits paid based on wages paid prior to such change in election or termination of coverage have been charged, any credit balance in such account shall be refunded to the employer.

Should there be a debit balance in such account, the employer shall, upon notice and demand for payment, mailed to his last-known address, pay into his account an amount equal to such debit balance. Such amount shall become due on or before the 10th day following the mailing of such notice and demand for payment.

Any such amount unpaid on the date due shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

e. The Commission may make necessary rules and regulations with respect to coverage of a group of nonprofit organizations and

with respect to the reimbursement of benefit payments by such group of nonprofit organizations.

(e) In order that the Commission shall be kept informed at all times on the circumstances and conditions of unemployment within the State and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the Commission may deem necessary shall be made. (Ex. Sess. 1936, c. 1, s. 7; 1939, c. 27, s. 6; 1941, c. 108, ss. 6, 8; c. 320; 1943, c. 377, ss. 11-14; 1945, c. 522, ss. 11-16; 1947, c. 326, ss. 13-15, 17; c. 881, s. 3; 1949, c. 424, ss. 9-13; c. 969; 1951, c. 322, s. 2; c. 332, ss. 4-7; 1953, c. 401, ss. 12-14; 1955, c. 385, ss. 5, 6; 1957, c. 1059, ss. 5-11; 1959, c. 362, ss. 7, 8; 1965, c. 795, ss. 6-10; 1969, c. 575, ss. 7, 8; 1971, c. 673, ss. 14-20.)

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 G.S. 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 present paragraph e 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).

The 1969 amendment rewrote subdivision (3) of subsection (b), and added paragraph c of subdivision (2) of subsection (c).

The 1971 amendment added "Except as provided in subsection (d) hereof," at the beginning of subdivision (1) of subsections (a), (b) and (c), rewrote subdivision (3) and added subdivisions (4) and (5) in subsection (a), substituted "years 1970 and 1971" for "year 1970 and thereafter" near the beginning of paragraph c of subdivision (3) of subsection (b), rewrote paragraph d of subdivision (3) of subsection (b), added present subsection (d) and redesignated former subsection (d) as (e).

§ 96-10. Collection of contributions.

(b) Collection.—

(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workmen's Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Commission, under the hand of its chairman, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Commission has reason to believe such delinquent has property located; such certificate and/or copies thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgment, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The clerk of superior courts shall charge a fee of one dollar ($1.00) for indexing and docketing said certificates, which shall be in lieu of any other fee chargeable under the General Statutes of North Carolina or any

public, local or private act. The Commission shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission, and when so forwarded and in the hands of such sheriff or agent of the Commission, shall have all the force and effect of an execution issued to such sheriff or agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Commission may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Commission for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Commission is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Commission, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Commission, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Commission shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Commission, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Commission for service the said agent of the Commission shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Commission to whom such order or execution is referred shall give a bond not to exceed three thousand dollars ($3,000.00) approved by the Commission for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Commission who is charged with the duty of serving executions shall wilfully fail, refuse, or neglect to execute any order directed to him by the said Commission and within the time provided by law, the official bond of such sheriff or of such agent of the Commission shall be liable for the contributions, penalty, interest, and costs due by the employer.

(2) Any representative of the Employment Security Commission may examine and copy the county tax listings, detailed inventories, statements of assets or similar information required under General Statutes, Chapter 105, to be filed with the tax supervisor of any county in this State by any person, firm, partnership, or corporation, domestic or foreign, engaged in operating any business enterprise in such county. Any such information obtained by an agent or employee of the Commission shall not be divulged, published, or open to public inspection other than to the Commission's employees in the performance of their public duties. Any employee or member of the Commission who violates any provision of this section shall be fined not less than twenty dollars ($20.00), nor more than two hundred dollars ($200.00), or imprisoned for not longer than 90 days, or both.

(3) When the Commission furnishes the clerk of superior court of any county in this State a written statement or certificate to the effect that any judgment docketed by the Commission against any firm or individual has been satisfied and paid in full, and said statement or certificate is signed by the chairman of the Commission and attested by its secretary, with the seal of the Commission affixed, it shall be the duty of the clerk of superior court to file said certificate and enter a notation thereof on the margin of the judgment docket to the effect that said judgment has been paid and satisfied in full, and is in consequence cancelled of record. Such cancellation shall have the full force and effect of a cancellation entered by an attorney of record for the Commission. It shall also be the duty of such clerk, when any such certificate is furnished him by the Commission showing that a judgment has been paid in part, to make a notation on the margin of the judgment docket showing the amount of such payment so certified and to file said certificate. This paragraph shall apply to judgments already docketed, as well as to the future judgments docketed by the Commission. For the filing of said statement or certificate and making new notations on the record, the clerk of superior court shall be paid a fee of fifty cents (50¢) by the Commission.

(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 G.S. 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; 1971, c. 673, s. 21.)

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).

The 1971 amendment added present subdivision (2) of subsection (b) and renumbered former subdivision (2) as (3).

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

§ 96-11. Period, election, and termination of employer's coverage.— (a) Any employing unit which is or becomes an employer subject to this Chapter within any calendar year shall be subject to this Chapter during the whole of such calendar year except as otherwise provided in G.S. 96-8(5)(b); provided, however, that on and after July 1, 1939, this section shall not be construed to apply to any part of the business of an employer as may come within the terms of section one (a) of the Federal Railroad Unemployment Insurance Act.

(b) Prior to January 1, 1972, and except as otherwise provided in subsections (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January of any calendar year, if it files with the Commission prior to the first day of March of such calendar year a written application for termination of coverage and the Commission finds that there were no 20 different weeks in the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week); provided that on and after January 1, 1972, except as otherwise provided in subsections (a), (c) and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January in any calendar year, if it files with the Commission prior to the first day of March of such year a written application for termination of coverage and the Commission finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed one or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individual was employed in each such week), and the Commission finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars ($1,500) or more. Provided further, except as otherwise provided in subsections (a), (c), and (d) of this section on and after January 1, 1974, an "employer" as the term is used in G.S. 96-8(5)k shall cease to be an employer subject to this Chapter only as of the first day of January in any calendar year, if it files with the Commission prior to the first day of March of such year a written application for termination of coverage and the Commission finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). For the purpose of this subsection, the two or more employing units mentioned in paragraphs b or c of G.S. 96-8, subdivision (5) shall be treated as a single employing unit: Provided, however, that any employer, as the term is used in G.S. 96-8(5)k, whose liability covers a period of more than two years when first discovered by the Commission, upon filing a written application for termination within 90 days after notification of his liability by the Commission, may be terminated as an employer effective January 1; and for any subsequent year if the Commission finds there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). Provided further, any other employer whose liability covers a period of more than two years when first discovered by the Commission, upon filing a written application for termination within 90 days after notification of his liability by the Commission may be terminated as an employer effective January 1, and for any subsequent years if the Commission finds that prior to January 1, 1972, there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such

week); and with respect to 1972 and subsequent years, if the Commission finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed one or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individual was employed in each such week), and the Commission finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars ($1,500) or more. In such cases, a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final; provided further, this provision shall not apply in any case of willful attempt in any manner to defeat or evade the payment of contributions becoming due under this Chapter.

(c) (1) An employing unit, not otherwise subject to this Chapter, which files with the Commission its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, it has filed with the Commission a written notice to that effect, provided such employing unit may be terminated by the Commission as provided under the provisions of subdivision (3) [(4)] 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) [(4)] of this subsection.

(3) a. On and after January 1, 1972, any political subdivision of this State may elect, for a period of not less than two calendar years, to cover under this Chapter service performed by employees in all of the hospitals and institutions of higher education, as defined in G.S. 96-8(5)l, operated by such political subdivisions. Any election is to be made by filing with the Commission a notice of such election at least 30 days prior to January 1, the effective date of such election. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in G.S. 96-9(d).

b. The provisions in G.S. 96-8(5)m with respect to benefit rights based on service for State and nonprofit institutions of higher education shall be applicable also to service covered by an election under this section.

c. The amounts required to be paid in lieu of contributions by any

political subdivision under this section shall be as provided in G.S. 96-9(d), with respect to similar payments by nonprofit organization.

d. An election under this section may be terminated as of January 1 of any calendar year subsequent to such two calendar years only if 30 days prior to such January 1, such employer has filed with the Commission a written notice to that effect.

(4) On and after July 1, 1965, the Commission on its own motion and in its discretion, upon 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 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 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed one or more individuals in employment (four or more prior to January 1, 1972), not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week, and the Commission finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars ($1,500) or more, except as otherwise provided. Provided further, an employer, as the term is used in G.S. 96-8(5)k, 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 120 days after notification of the reactivation of its account. Such termination shall be effective January 1 of any calendar year only if the Commission finds that there were no 20 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, not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week. In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final. (Ex. Sess. 1936, c. 1, s. 8; 1939, c. 52, ss. 2, 3; 1941, c. 108, s. 9; 1945, c. 522, ss. 21-23; 1949, c. 424, ss. 17, 18; c. 522; 1951, c. 332, s. 9; c. 1147; 1953, c. 401, s. 16; 1955, c. 385, s. 10; 1959, c. 362, ss. 10, 11; 1961, c. 454, s. 16; 1965, c. 795, ss. 12-14; 1971, c. 673, ss. 22-24.)

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).

The 1971 amendment rewrote subsection (b), added present subdivision (3) and redesignated former subdivision (3) as (4) in subsection (c), and rewrote the third sentence and added the fourth and fifth sentences in subsection (d).

§ 96-12. Benefits.

(b) (1) Each eligible individual whose benefit year begins on and after the first day of August, 1969, and who is totally unemployed as defined by G.S. 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 Weekly Benefit	Column III Non-High Quarter Wages
As Much As	But Less Than	Amount	Required
Less than $550		Ineligible	
$ 550	$ 650	$12	$ 165
650	750	14	195
750	850	16	225
850	950	18	255
950	1,050	20	285
1,050	1,150	22	315
1,150	1,300	24	345
1,300	1,450	26	390
1,450	1,600	28	435
1,600	1,800	30	480
1,800	2,000	32	540
2,000	2,200	34	600
2,200	2,500	36	660
2,500	2,800	38	750
2,800	3,100	40	840
3,100	3,400	42	930
3,400	3,800	44	1,020
3,800	4,200	46	1,140
4,200	4,600	48	1,260
4,600 and over		50	1,380

(2) Notwithstanding any of the foregoing provisions of this section, beginning August 1, 1969, and at each August 1 thereafter, a maximum weekly benefit amount shall be computed. It is derived by multiplying the average weekly insured wage obtained in accordance with G.S. 96-8(22) by fifty per centum (50%), rounded to the nearest multiple of two dollars ($2.00). After determining the maximum weekly benefit amount available the Commission shall extend the benefit schedule, if required, by an appropriate modification of the pattern of base period wages required in Column I, the assigned weekly benefit in Column II and nonhigher quarter earnings required in Column III. The new maximum rate determined in the aforesaid manner shall be effective only to each eligible individual whose benefit year begins on or after such August 1 of the year the computation is made.

(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 prior to January 1, 1972, shall not be entitled to benefits unless he has been paid qualifying wages required in G.S. 96-12(b)(1), 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 Chapter 85, Title 5, United States Code.

(4) Qualifying Wages for Second Benefit Year. — Any individual whose prior benefit year has expired and who files a claim for benefits on and after January 1, 1972, shall not be entitled to benefits unless he has been paid qualifying wages required by G.S. 96-12(b)(1), 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 10 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 Chapter 85, Title 5, United States Code.

(c) Partial Weekly Benefit.—Each eligible individual who is either partially unemployed or part totally unemployed (as defined in G.S. 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.

(e) Extended Benefits.—Effective January 1, 1972, extended benefits shall be paid under this Chapter as herein specified:

A. Definitions.—As used in this subsection, unless the context clearly requires otherwise—

(1) "Extended benefit period" means a period which

(a) begins with the third week after whichever of the following weeks occurs first:

(I) a week for which there is a national "on" indicator, or

(II) a week for which there is a State "on" indicator; and

(b) ends with either of the following weeks, whichever occurs later:

(I) the third week after the first week for which there is both a national "off" indicator and a State "off" indicator; or

(II) the thirteenth consecutive week of such period.

Provided, that no extended benefit period may begin by reason of a State "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

(2) There is a "national 'on' indicator" for a week if the U.S. Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half percent (4½%).

(3) There is a "national 'off' indicator" for a week if the U.S. Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half percent (4½%).

(4) There is a "state 'on' indicator" for this State for a week if the Commission determines, in accordance with the regulations of the U.S. Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks,

the rate of insured unemployment (not seasonally adjusted) under this Chapter—

a. equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and

b. equaled or exceeded four percent (4%).

(5) There is a "State 'off' indicator" for this State for a week if the Commission determines, in accordance with the regulations of the U.S. Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter—

a. was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, or

b. was less than four percent (4%).

(6) "Rate of insured unemployment," for the purposes of subparagraphs (4) and (5) of this subsection, means the percentage derived by dividing

a. the average weekly number of individuals filing claims in this State for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the Commission on the basis of its reports to the U.S. Secretary of Labor, by

b. the average monthly employment covered under this Chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

(7) "Regular benefits" means benefits payable to an individual under this Chapter or any other State law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

a. has received, prior to such week, all of the regular benefits that were available to him under this Chapter or any other State law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although (1) as a result of a pending appeal with respect to wages

that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (2) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions in G.S. 96-16; or

b. his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

c. (1) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the U.S. Secretary of Labor; and

(2) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state approved by the U.S. Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

B. Effect of State Law Provisions Relating to Regular Benefits on Claims for, and the Payment of, Extended Benefits.—Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Commission, the provisions of this Chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

C. Eligibility Requirements for Extended Benefits.—An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that with respect to such week:

1. he is an "exhaustee" as defined in subsection A(10).
2. he has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

D. Weekly Extended Benefit Amount.—The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts.

E. Total Extended Benefit Amount.—The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

1. Fifty percent (50%) of the total amount of regular benefits which were payable to him under this Chapter in his applicable benefit year; or

2. 13 times his weekly benefit amount which was payable to him under this Chapter for a week of total unemployment in the applicable benefit year.

F. Beginning and Termination of Extended Benefit Period.—

1. Whenever an extended benefit period is to become effective in this State (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this State as a result of state and national "off" indicators, the Commission shall make an appropriate public announcement.

2. Computations required by the provisions of subsection A(6) shall be made by the Commission, in accordance with regulations prescribed by the U.S. Secretary of Labor.

G. Irrespective of any other provisions of this Chapter, any extended benefits paid to any claimant under G.S. 96-12(e) shall not be charged to the account of the base period employer(s) who pay contributions as required by this Chapter. However, fifty percent (50%) of any such benefits paid shall be allocated as provided in G.S. 96-9(c)(2)a (except that G.S. 96-9(c)(2)b shall not apply), and the applicable amount shall be charged to the account of the appropriate employer paying on a reimbursement basis in lieu of contributions. (Ex. Sess. 1936, c. 1, s. 3; 1937, c. 448, s. 1; 1939, c. 27, ss. 1-3, 14; c. 141; 1941, c. 108, s. 1; c. 276; 1943, c. 377, ss. 1-4; 1945, c. 522, ss. 24-26; 1947, c. 326, s. 21; 1949, c. 424, ss. 19-21; 1951, c. 332, ss. 10-12; 1953, c. 401, ss. 17, 18; 1957, c. 1059, ss. 12, 13; c. 1339; 1959, c. 362, ss. 12-15; 1961, c. 454, ss. 17, 18; 1965, c. 795, ss. 15, 16; 1969, c. 575, s. 9; 1971, c. 673, ss. 25, 26.)

Editor's Note.—

The 1965 amendment made changes in former subdivision (1) of subsection (b), changed the date in present subdivision (1) of that subsection, added the proviso which precedes the table in that subdivision, rewrote the table therein and rewrote subsection (c).

The 1969 amendment rewrote subsection (b).

The 1971 amendment deleted former subdivision (1), renumbered former subdivisions (2) and (3) as (1) and (2), deleted former subdivision (4), relating to qualifying wages for exhaustees and added present subdivisions (3) and (4), all in subsection (b), and rewrote subsection (e).

As the rest of the section was not changed by the amendment, only subsections (b), (c) and (e) are 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 G.S. 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 the equivalent of three customary full-time working days 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: Provided further, however, effective July 1, 1969, an unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance. The Commission may approve such training course for an individual only if:

a. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;
b. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and
c. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully.

(4) The payment of benefits to any individual based on services for nonprofit organizations, hospitals, or State hospitals and State institutions of higher education and other institutions of higher education subject to this Chapter shall be in the same manner and under the same conditions of the laws of this Chapter as applied to individuals whose benefit rights are based on other services subject to this Chapter. Except that with respect to services in instructional, research, or principal administrative capacity in an institution of higher education which meets the requirements of G.S. 96-8(5)(l), benefits shall not be payable based on such services for any week commencing during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract,

if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(5) 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; 1969, c. 575, ss. 10, 11; 1971, c. 673, ss. 27, 28.)

Editor's Note.—

The 1965 amendment added the next-to-last sentence in subdivision (3) and added present subdivision (5).

The 1969 amendment substituted "the equivalent of three customary full-time working days" for "as much as sixty percent of the full-time working hours" in the third-from-the-last sentence of subdivision (3) and added the proviso to the next-to-last sentence and the last sentence of that subdivision.

The 1971 amendment deleted "if such individual is not receiving a training allowance pursuant to the provisions of a federal or State law" at the end of the present second-from-the-last sentence of subdivision (3), added the next-to-last sentence of that subdivision, added present subdivision (4) and renumbered former subdivision (4) as (5).

Design of Employment Security Law.— See In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

Construed with § 96-14.—

This section and § 96-14, being in para materia, are to be construed together. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

"Able to Work".—See In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

The words "available for work," etc.—

In accord with original See In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

For meaning of "available for work," see In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

§ **96-14. Disqualification for benefits.**—An individual shall be disqualified for benefits:

(3) For not less than four, nor more than 12 consecutive weeks of unemployment, which occur within a benefit year, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the Commission; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the Commission; and the maximum amount of benefits due said individual during his then current benefit year shall be reduced by an amount determined by multiplying the number of such consecutive weeks of unemployment by the weekly benefit amount. Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall

be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) For not less than four nor more than 12 consecutive weeks of unemployment which occur within a benefit year, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that:

a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the Commission;

b. Such individual has discontinued his training course without good cause; or

c. If the individual is separated from his training course or vocational school due to misconduct;

and the maximum amount of benefits due said individual during his current benefit year shall be reduced by an amount determined by multiplying the number of such consecutive weeks of unemployment by the weekly benefit amount.

Provided, however, that in any case where any week or weeks of disqualification as provided in subdivisions (1), (2), (3), and (4) of this section have not elapsed on account of the termination of an individual's benefit year, such remaining week or weeks of disqualification shall be applicable in the next benefit year at the then current benefit amount of such individual; provided such new benefit year is established by the individual within 12 months from the date of the ending of the preceding benefit year. When any individual who has been disqualified as provided in subdivisions (1), (2), (3), and (4) of this section returns to employment or training before the disqualifying period has elapsed, the remaining week or weeks of disqualification shall be cancelled and no deduction based on such weeks shall be made from the maximum amount of benefits of such individual; provided such individual shows the fact of employment or training to the satisfaction of the Commission.

(5) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to

physically resume operations in the method of operating in use at the plant, factory, or establishment of th employing unit.

(6) If the Commission finds he is customarily self-employed and can reasonably return to self-employment.

(7) For any week after June 30, 1939, with respect to which he shall have and assert any right to unemployment benefits under an employment security law of either the federal or a state government, other than the State of North Carolina.

(8) For any week with respect to which he has received any sum from the employer pursuant to an order of the National Labor Relations Board or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on a pro rata basis; provided further that if the amount so prorated to a particular week is less than the benefits which would otherwise be due under this Chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits as provided under G.S. 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; 1969, c. 575, s. 12; 1971, c. 673, s. 29.)

Editor's Note.—

The 1965 amendment eliminated a former subdivision (5) and renumbered the following subdivisions.

The 1969 amendment inserted present subdivision (4) and transferred the former second paragraph of subdivision (3) to the new subdivision, inserting the references to (4) in the first and second sentences and the words "or training" in two places in the second sentence of that paragraph. The amendment also renumbered former subdivisions (4) through (7) as (5) through (8).

The 1971 amendment added the last sentence of the first paragraph of subdivision (3).

As subdivisions (1) and (2) were not changed by the amendments, they are not set out.

Design of Employment Security Law.— See In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

Strict Construction. — Sections of this chapter imposing disqualifications for its benefits should be strictly construed in favor of the claimant and should not be enlarged by implication or by adding to one disqualifying provision words found only in another. In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

"Suitable Work". — See In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

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).

"Without Good Cause".—See In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968).

Applied in Blue Jeans Corp. v. Amalgamated Clothing Workers of America, 275 N.C. 503, 169 S.E.2d 867 (1969).

§ 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 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. All base period employers, as well as the most recent employer of a claimant on a temporary layoff, 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 G.S. 96-13 herein, or whether any disqualification shall be imposed by virtue of G.S. 96-14 of this Chapter, or benefits denied, or his account adjusted pursuant to G.S. 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 G.S. 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 10 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 10 days after the decision of the Commission has become final, any party aggrieved thereby who has filed notice of appeal within the 10-day period as provided by G.S. 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 30 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 judgment of the superior court, as provided in civil cases. The Commission shall have the right of appeal to the appellate division 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 G.S. 96-15(b)(2).

(j) Information obtained by any employee of the Commission from an employer or the claimant with respect to a claim for benefits shall not be published or opened to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the claimant's identity or his rights to potential benefits or the amount of benefits paid except as provided below. Any individual, as well as any interested employer(s) may be supplied with information as to his potential benefit rights from such claim records. Any claimant at a

hearing before a claims deputy or an appeals tribunal or the Commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claims. All reports, statements, information, and communications of every character with respect to a claim for benefits so made or given to the Commission, its deputies, agents, examiners and employees, whether same be written, oral or in the form of testimony at any hearing, or whether obtained by the Commission from the claimant or the employer or the employer's books and records, shall be absolute privileged communications in any civil or criminal proceedings except proceedings involving the administration of this Chapter: Provided, nothing herein contained shall operate to relieve any claimant or employing unit from disclosing any information required by this Chapter or as prescribed by the Commission involving the administration of this Chapter. Any employee or member of the Commission who violates any provision of this section shall be fined not less than twenty dollars ($20.00) nor more than two hundred dollars ($200.00), or imprisoned for not longer than 90 days, or both.

(k) Irrespective of any other provision of this Chapter, the Commission may adopt minimum regulations necessary to provide for the payment of benefits to individuals promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42 U.S.C.A., § 503(a)(1)). (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; 1969, c. 575, ss. 13, 14; 1971, c. 673, ss. 30, 30.1.)

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).

The 1969 amendment substituted "judgment" for "decision" in the ninth sentence of subsection (i) and "appellate division" for "Supreme Court" in the tenth sentence of subsection (i) and added subsection (j).

The 1971 amendment substituted "All base period employers, as well as the most recent employer of a claimant on a temporary layoff" for "The most recent and the base period employers" at the beginning of the last sentence of the first paragraph of subdivision (1) of subsection (b) and added subsection (k).

Only the subsections affected by the amendments are set out.

§ 96-18. Penalties.—(a) Any person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit under this Chapter or under an employment security law of any other state, the federal government, or of a foreign government, either for himself or any other person, shall be punished by a fine of not less than twenty dollars ($20.00), nor more than fifty dollars ($50.00), or by imprisonment for not longer than 30 days, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state or foreign government for misrepresentation to obtain benefits under the law of this State shall be made available to the agency administering the employment security law of any such state or foreign government for the purpose of such prosecution. Photostatic copies of all records of agencies of other states or foreign governments required in the prosecution of any criminal action under this section shall be as competent evidence as the originals when certified under the seal of such agency, or when there is no seal, under the hand of the keeper of such records.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other pay-

ment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty dollars ($20.00) or more than fifty dollars ($50.00) or by imprisonment for not longer than 30 days; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provisions of this Chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Chapter, or for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars ($20.00) or more than fifty dollars ($50.00) or by imprisonment for not longer than 30 days, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent), has received any sum as benefits under this Chapter while any conditions for the receipt of benefits imposed by this Chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have such sum deducted from any future benefits payable to him under this Chapter, or shall be liable to repay to the Commission for the Unemployment Insurance Fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in G.S. 96-10(b) for the collection of past-due contributions; provided "this Chapter" and "Unemployment Insurance Fund" shall also be deemed to mean the employment security law and the unemployment insurance fund of any other state or the federal government, or a foreign government for purposes of this subsection, when an interstate claim is involved.

(e) An individual shall not be entitled to receive benefits for one year beginning with the first day 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 has received any sum as benefits to which he was not entitled, such sum having been paid to him as the result of error on the part of any representative of the Commission, shall be liable to have such sum deducted from any future benefits payable to him under this Chapter, or shall be liable to repay to the Commission for the Unemployment Insurance Fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in G.S. 96-10(b) for the collection of past-due contributions; provided, this "Chapter" and "Unemployment Insurance Fund" shall also be deemed to mean the employment security law and the unemployment insurance fund of any other state or the federal government, or a foreign government for the purposes of this subsection, when an interstate claim is involved. (Ex. Sess. 1936, c. 1, s. 16; 1943, c. 319; c. 377, ss. 29, 30; 1945, c. 552, s. 34; 1949, c. 424, s. 26; 1951, c. 332, s. 16; 1953, c. 401, ss. 1, 22; 1955, c. 385, s. 9; 1959, c. 362, ss. 19, 20; 1965, c. 795, ss. 23, 24; 1971, c. 673, s. 31.)

Editor's Note.—

The 1965 amendment rewrote subsection (e) and made changes in former subsection (f).

The 1971 amendment deleted subsection (f), relating to disqualification for benefits of persons guilty of larceny or embezzlement in connection with their employment, and redesignated former subsection (g) as present subsection (f).

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

November 1, 1971

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1971 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.

Robert Morgan

Attorney General of North Carolina

STATE OF NORTH CAROLINA

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