

THE GENERAL STATUTES OF NORTH CAROLINA

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1975 SUPPLEMENT

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

UNDER THE DIRECTION OF

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

Volume 2C

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Preface

This Supplement to Replacement Volume 2C contains the general laws of a permanent nature enacted at the 1975 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

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

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

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

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

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

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1975 Session of the General Assembly affecting Chapters 63 through 96 of the General Statutes.

Annotations:

Sources of the annotations:

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

Scope of Volume

Statutes

Permanent portions of the general laws enacted at the 1878 Session of the General Assembly affecting Chapters 43 through 56 of the General Statutes.

Annotations

Source of the annotations

North Carolina Reports volumes 244 to 268 (1877-1881)
North Carolina Court of Appeals Reports volumes 13 to 100 (1882-1901)
Federal Reporter and Federal Reporter 2d volumes 1 to 113 (1882-1901)
Federal Supplement volumes 1 to 10 (1882-1901)
Federal Cases Reports volumes 1 to 10 (1882-1901)
Federal Cases Reports volumes 11 to 100 (1902-1911)
Supreme Court Reports volumes 1 to 100 (1912-1921)

Comments of the Attorney General

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The General Statutes of North Carolina

1975 Supplement

VOLUME 2C

Chapter 63.

Aeronautics.

ARTICLE 1.

Municipal Airports.

§ 63-1. Definitions; singular and plural.

Applied in *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

ARTICLE 6.

Public Airports and Related Facilities.

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

A municipality operating an airport acts in a proprietary capacity. *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

Fixing of Fees Not Administrative Decision. — The fixing by a municipal airport authority of fees it will charge for the use of its property is not an “administrative decision.” *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

In determining the fee it will charge for the privilege of landing an aircraft upon its runway and the rent it will charge for the use of its properties, a municipal airport authority is acting as the proprietor of the property, not as a regulatory agency. *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

And Notice Not Required. — Nothing in this section requires a municipal airport authority to give notice to present or prospective users of its properties that the authority is contemplating a change in such fees and rental charges. *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

Nor Hearing. — No provision in this section requires that a municipal airport authority conduct a hearing, receive evidence and make findings of fact or that it follow any other procedural course in determining the landing fees or rentals to be charged by it. *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

Chapter 65.**Cemeteries.****Article 7.****Cemeteries Operated for Private Gain.**

Sec.

65-18 to 65-36. [Recodified.]

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65-71. Penalties.

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ARTICLE 7.***Cemeteries Operated for Private Gain.***

§§ 65-18 to 65-36: Recodified as §§ 65-46 to 65-72, effective September 1, 1975.

Editor's Note. — This Article was rewritten by Session Laws 1975, c. 768, s. 1, effective Sept. 1, 1975, and has been recodified as Article 9, § 65-46 et seq., of this Chapter.

ARTICLE 8.***Municipal Cemeteries.***

§§ 65-41 to 65-45: Reserved for future codification purposes.

ARTICLE 9.***North Carolina Cemetery Act.***

§ 65-46. **Short title.** — This Article 9 may be cited as "North Carolina Cemetery Act." (1975, c. 768, s. 1.)

Editor's Note. — This Article is Article 7 of this Chapter as rewritten by Session Laws 1975, c. 768, s. 1, effective Sept. 1, 1975, and recodified. Where appropriate, the historical citations to the sections of the former Article have been added to corresponding sections of the new Article.

Session Laws 1975, c. 768, s. 2, contains a severability clause.

Session Laws 1975, c. 768, s. 4, makes the act effective Sept. 1, 1975.

§ 65-47. Scope. — (a) The provisions of this Article shall apply to all persons engaged in the business of operating a cemetery as defined herein, except cemeteries owned and operated by governmental agencies or churches.

(b) Any cemetery beneficially owned and operated by a fraternal organization or its corporate agent for at least 50 years prior to September 1, 1975, shall be exempt from the provisions of Article 9 of this Chapter. (1975, c. 768, s. 1.)

§ 65-48. Definitions. — As used in this Article, unless otherwise stated or unless the context or subject matter clearly indicates otherwise:

- (1) "Bank of belowground crypts" means any construction unit of belowground crypts acceptable to the Commission which a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.
- (2) "Belowground crypts" consists of an interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and are also known as lawn crypts, westminsters or turf top crypts.
- (3) "Cemetery" means any one or a combination of more than one of the following in a place used or to be used and dedicated or designated for cemetery purposes:
 - a. A burial park, for earth interment.
 - b. A mausoleum.
 - c. A columbarium.
- (4) "Cemetery broker" means a legal entity engaged in the business of arranging sales of cemetery products between legal entities and which sale does not involve a cemetery company, but does not mean funeral establishments or funeral directors operating under G.S. 90-210.10, when dealing between legal entities wherein one such entity shall be members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being or shall be an individual negotiating the sale of cemetery property as a part of his or her preneed arrangements under G.S. 65-36.1 through 65-36.8. The North Carolina Cemetery Act shall not apply to any cemetery broker selling less than five grave spaces per year.
- (5) "Cemetery company" means any legal entity that owns or controls cemetery lands or property and conducts the business of a cemetery, including all cemeteries owned and operated by governmental agencies, churches and fraternal organizations or their corporate agents for the duration of any sales and management contracts entered into with cemetery sales organizations or cemetery management organizations for cemetery purposes, or with any other legal entity other than direct employees of said governmental agency, church or fraternal organization.
- (6) "Cemetery management organization" means any legal entity contracting as an independent contractor with a cemetery company to manage a cemetery but does not mean individual managers employed by and contracting directly with cemetery companies operating under this Article.
- (7) "Cemetery sales organization" means any legal entity contracting as an independent contractor with a cemetery company to conduct sales of cemetery products, but does not mean individual salesmen or sales managers employed by and contracting directly with cemetery companies operating under this Article, nor does it mean funeral establishments or funeral directors operating under licenses authorized by G.S. 90-210.10 when dealing directly with a cemetery company and

with members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being or with an individual negotiating the sale of cemetery property as a part of his or her preneed arrangements under G.S. 65-36.1 through 65-36.8.

- (8) "Columbarium" means a structure or building substantially exposed aboveground intended to be used for the interment of the cremated remains of a deceased person.
- (9) "Commission" means the North Carolina Cemetery Commission.
- (10) "Grave space" means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person.
- (11) "Human remains" or "remains" means the bodies of deceased persons, and includes the bodies in any stage of decomposition, and cremated remains.
- (12) "Mausoleum" means a structure or building substantially exposed aboveground intended to be used for the entombment of remains of a deceased person.
- (13) "Mausoleum section" means any construction unit of a mausoleum acceptable to the commission which a cemetery uses to initiate its mausoleum program or to add to its existing mausoleum structures.
- (14) "Person" means an individual, corporation, partnership, joint venture, or association.
- (15) "Vault" means a crypt or underground receptacle which is used for interment in the ground and which is designed to encase and protect caskets or similar burial devices. For the purposes of this Article, a vault is a preneed item until delivery to the purchaser. (1943, c. 644, s. 2; 1967, c. 1009, s. 2; 1971, c. 1149, s. 1; 1975, c. 768, s. 1.)

§ 65-49. The North Carolina Cemetery Commission. — There is hereby established in the Department of Commerce a North Carolina Cemetery Commission with the power and duty to adopt rules and regulations to be followed in the enforcement of this Article. (1975, c. 768, s. 1.)

§ 65-50. Cemetery Commission; members, selection, quorum. — The Cemetery Commission shall consist of seven members appointed by the Governor. Two members shall be owners or managers of cemeteries in North Carolina. Three members shall be selected from six nominees submitted by the North Carolina Cemetery Association. Two members shall be public members who have no financial interest in, and are not involved in management of, any cemetery or funeral related business. Four members of the initial Commission shall be appointed for a term to expire June 30, 1977, and three members shall be appointed for a term to expire June 30, 1976. At the end of the respective terms of office of the initial members of the Commission, their successors shall be nominated in the same manner, selected from the same categories and appointed for terms of four years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

A majority of the Commission shall constitute a quorum for the transaction of business.

At the first meeting of the Commission held after September 1, 1975, the Commission shall elect one of its members as its chairman and another as its vice-chairman, both to serve through June 30 of the next following year.

Thereafter, at its first meeting held on or after July 1 of each year, the Commission shall elect from its members a chairman and vice-chairman to serve through June 30 of the next following year. (1975, c. 768, s. 1.)

§ 65-51. Principal office. — The principal office of the Commission shall be in the City of Raleigh, North Carolina. Notice of all regular and special meetings of the Commission shall be advertised 10 or more days in advance in at least three newspapers in North Carolina having inter-county circulation in the State. Each member of the Commission shall receive per diem and allowances in accordance with G.S. 138-5. The administrator of the Commission, other employees required to attend and legal counsel to the Commission shall be entitled to actual expenses while attending regular or special meetings of the Commission held other than in Raleigh, North Carolina. All expenses of the Commission shall be paid from funds coming to the Commission pursuant to this Article. (1975, c. 768, s. 1.)

§ 65-52. Regular and special meetings. — The Cemetery Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1975, c. 768, s. 1.)

§ 65-53. Powers. — In addition to other powers conferred by this Article, the Cemetery Commission shall have the following powers and duties:

- (1) The administrator shall be appointed by the Governor upon recommendation of the Cemetery Commission. The Cemetery Commission shall set the compensation of the administrator and such other personnel as are necessary to operate the Commission.
- (2) Prior to the change of control of any cemetery company, an examination of the licensee's records may be required, and if so, the fees provided in subdivision (3) hereof would apply thereto.
- (3) Investigate, upon its own initiative, or upon a verified complaint in writing, the actions of any person engaged in the business or acting in the capacity of a licensee under this Article. The license of a licensee may be revoked or suspended for a period not exceeding two years, or until compliance with a lawful order imposed in the final order of suspension, or both, upon a finding of fact showing that the licensee has either failed to:
 - a. Pay the fees required herein;
 - b. Make any reports required by this Article;
 - c. Remit to the care and maintenance fund the required amounts; or
 - d. Abide by any other regulations promulgated by the Commission.
- (4) In all proceedings under this Article for the revocation or suspension of licenses, the provisions of Chapter 150 of the General Statutes shall be applicable.
- (5) At such time as the Commission finds it necessary it may bring an action in the name of the State in the court of the county in which the licensed place of business is located against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper; provided, that before any such action is brought the Commission shall give the cemetery at least 20 days' notice in writing, stating the alleged violation and giving the cemetery an opportunity within the 20-day period to cure the violation. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, the court shall have the power and jurisdiction to impound and to appoint a receiver for the property and business of the defendant, including books, papers,

documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this Article through or by means of the use of said property and business. The Commission may institute proceedings against the cemetery or its officers, where after an examination, pursuant to this Article, a shortage in the care and maintenance trust fund is discovered, to recover said shortage. (1943, c. 644, s. 17; 1971, c. 1149, s. 8; 1973, c. 732, s. 2; 1975, c. 768, s. 1.)

§ 65-54. Annual budget of Commission; collection of funds for operation.

— The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and any other sources provided in this Article. On or before July 1 of each year, each licensed cemetery will pay a license fee of one hundred dollars (\$100.00) per year; and in addition, a fee for each grave space, niche, mausoleum crypt deeded, and preneed cemetery merchandise contract for vaults, belowground crypts, and memorials, to be set by the Commission each year in order to defray the expenses of the Commission as set forth in the budget. (1975, c. 768, s. 1.)

§ 65-55. License; cemetery company. — (a) No legal entity shall engage in the business of operating a cemetery company except as authorized by this Article and without first obtaining a license from the Commission.

(b) Any legal entity wishing to establish a cemetery shall file a written application for authority with the Commission on forms provided by the Commission.

(c) Upon receipt of the application and filing fee of four hundred dollars (\$400.00), the Commission shall cause an investigation to be made to establish the following criteria for approval of such application:

- (1) The creation of a legal entity to conduct cemetery business, and the proposed financial structure.
- (2) A perpetual care trust fund agreement, with an initial deposit of not less than fifteen thousand dollars (\$15,000) 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, conditioned only upon whether the application is approved.
- (3) A plat of the land to be used for a cemetery, showing county, city and/or township, and names of roads and access streets or ways.
- (4) Designation by the legal entity wishing to establish a cemetery of a general manager who shall be a person of good moral character, having had no less than one year's experience in cemeteries.
- (5) Development plans sufficient to insure the community that the cemetery will provide adequate cemetery services, and the property is suitable for use as a cemetery.

(d) The Commission, after receipt of the investigating report, shall grant or refuse to grant the authority to organize a cemetery.

(e) If the Commission intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and a place for a hearing before the Commission and a summary statement of the reasons for the proposed denial. The notice of intent shall be mailed by certified mail to the applicant at the address stated in the application at least 15 days prior to the scheduled hearing date. The applicant shall pay the costs of this hearing as assessed by the Commission unless the applicant notifies the Commission by certified mail at least five days prior to the scheduled hearing date that a hearing is waived. Any appeals from the Commission's decision shall be to the court having jurisdiction of the applicant or the Commission.

(f) If the Commission intends to grant the authority, it shall give written notice that the authority to organize a cemetery has been granted and that a license to operate will be issued upon the completion of the following:

- (1) Establishment of the care and maintenance trust fund and receipt by the Commission of a certificate from the trust company, certifying receipt of the initial deposit required under this Article.
- (2) Full development, ready for burial, of not less than two acres including a completed paved road from a public roadway to said developed section, certified by inspection of the Commission or its representative.
- (3) 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 to not less than 30 acres 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.
- (4) A plat of the cemetery showing the number and location of all lots surveyed and permanently staked for sale. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9; 1975, c. 768, s. 1.)

§ 65-56. Existing companies; effect of Article. — Existing cemetery companies at the time of the adoption of this Chapter shall continue in full force and effect and be granted a license but shall hereafter be operated in accordance with the provisions of Article 9 of this Chapter. (1975, c. 768, s. 1.)

§ 65-57. Licenses for sales organizations, management organizations and brokers. — (a) No legal entity shall engage in the business of a cemetery sales organization, a cemetery management organization or a cemetery broker except as authorized by this Article, and without first obtaining a license from the Commission.

(b) Any legal entity wishing to establish and operate the business of a cemetery sales organization, a cemetery management organization or a cemetery broker shall file a written application for authority with the Commission on forms provided by the Commission which must contain such of the following documents and information as may be required by the Commission:

- (1) The appointment of a North Carolina resident to receive service of any lawful process in any noncriminal proceedings arising under this Chapter against the applicant, its principal owners, principal stockholders, directors and general manager or their personal representatives.
- (2) The states or other jurisdictions in which the applicant presently is conducting the business activity applied for or other similar businesses and any adverse order, judgment or decree entered against the applicant in each jurisdiction or by any court.
- (3) The applicant's name, address and the form, date and jurisdiction of the organization and the address of each of its offices within or without this State.
- (4) The name, address, principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions.
- (5) Copies of the articles of incorporation or articles of partnership or joint venture agreement or other instrument establishing the legal entity of the applicant.

(c) The application shall be accompanied by an initial filing fee of four hundred dollars (\$400.00) for cemetery sales organization and cemetery management organization and an initial filing fee of two hundred dollars (\$200.00) for a

cemetery broker. If ninety percent (90%) or more of the applicant is owned by an existing cemetery company operating under the North Carolina Cemetery Act, then the initial filing fee shall be one half of the sums set out herein.

(d) Upon receipt of the application and filing fee, the Commission shall cause an investigation to be made of the legal entity to conduct the business applied for and the qualification of said legal entity to do business in North Carolina.

(e) The Commission, after receipt of the investigation report, shall grant or refuse to grant the authority to organize the organization applied for.

(f) If the Commission intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and a place for hearing before the Commission and a summary statement of the reasons for the proposed denial. The notice of intent shall be mailed by certified mail to the applicant at the address stated in the application at least 15 days prior to the scheduled hearing date. Any appeals from the Commission's decision shall be to the court having jurisdiction of the applicant, or in the event of an out-of-state applicant, then to the court having jurisdiction of the Commission.

(g) If the Commission intends to grant the authority, it shall give written notice that the authority to organize the business applied for has been granted and that a license to operate will be issued upon presentment to the Commission of a statement of employment between the applicant and the cemetery or cemeteries to be serviced thereby.

(h) Any person or any cemetery sales organization or any cemetery management organization or any cemetery broker violating the provisions of this section is guilty of a misdemeanor, punishable as provided in G.S. 14-3 and shall be subject to revocation of the license to operate. (1975, c. 768, s. 1.)

§ 65-58. Licenses for persons selling preneed grave space. — (a) No person shall offer to sell preneed grave spaces, mausoleum crypts, niches, memorials, vaults or any other preneed cemetery merchandise or services under any plan authorized for any cemetery, cemetery sales group, or cemetery management group, before obtaining a license from the Commission.

(b) Persons wishing to obtain a license shall file a written application with the Commission on forms provided by the Commission. The Commission may require such information and documents as it deems necessary to protect the public interest.

(c) The application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to cover the expenses of processing and investigation. After processing and investigation the Commission shall grant, or refuse to grant, the license applied for. The annual license fee shall be sent by the Commission but shall not exceed ten dollars (\$10.00).

(d) If the Commission refuses to grant the license applied for, it shall give written notice to the applicant. The notice shall state a time and a place for hearing before the Commission, and a summary statement of the reasons for the refusal to grant the license. The notice shall be mailed by registered mail or certified mail to the applicant at the address stated in the application at least 30 days prior to the scheduled hearing date.

(e) If the Commission intends to grant the license, it shall give written notice that the license will be issued upon presentment to the Commission of a duly executed statement of employment between the applicant and the cemetery or cemeteries to be serviced thereby.

(f) The provisions of Article 4 of Chapter 150A of the General Statutes of North Carolina relating to "Judicial Review" shall apply to appeals or petitions for judicial review by any person or persons aggrieved by an order or decision of the Commission.

(g) The provisions of this Article 9 shall not apply to persons holding a certificate under G.S. 65-36.1 through 65-36.8. (1943, c. 644, s. 15; 1967, c. 1009, s. 14; 1975, c. 768, s. 1.)

§ 65-59. Application for change of control; filing fee. — In any case where a person, a group of persons, or a corporation proposes to purchase or acquire control of an existing cemetery company either by purchasing the outstanding capital stock of any cemetery company, or the interest of the owner or owners, and thereby to change the control of said cemetery company, such person shall first make application on [a] form supplied by the Commission for a certificate of approval of such proposed change of control of said cemetery company. The application shall contain the name and address of the proposed new owners and the said Commission shall issue said certificate of approval only after it has become satisfied that the proposed new owners are qualified by character, experience and financial responsibility to control and operate the said cemetery in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. Such application for a purchase or change of control must be completed and accompanied by an initial filing fee of one hundred dollars (\$100.00) to cover examination provided in G.S. 65-53(2) if required, and if records are in order, certificate of approval shall be issued. (1975, c. 768, s. 1.)

§ 65-60. Records. — A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial, name of the person buried, together with lot, plot, and space in which such burial was made therein. All sales, trust funds, accounting records, and all other records of the licensee shall be available at the licensee's principal place of business in this State and shall be readily available at all reasonable times for examination by an authorized representative of the Commission. (1975, c. 768, s. 1.)

§ 65-61. Required trust fund for care and maintenance; remedy of Commission for noncompliance. — No cemetery company shall be permitted to establish, or operate if already established, a cemetery without providing for the future care and maintenance of such cemetery, for which a trust fund shall be established to be known as "the care and maintenance trust fund of (here use name of licensee)." If any cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this Article, the Commission, after reasonable notice, shall proceed to enforce compliance under the powers vested in it under this Article; provided any nonprofit cemetery corporation, incorporated and engaged in the cemetery business continuously since and prior to 1915 and whose current trust assets exceed seven hundred fifty thousand dollars (\$750,000) shall not be required to designate a corporate trustee. The trust fund agreement shall contain and include the following: name, location, and address of both the licensee and the trustee showing the date of agreement together with the amounts required deposited as stated in this Article. No person shall withdraw or transfer any portion of the corpus of the care and maintenance trust fund without first obtaining written consent from the Commission. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9; 1975, c. 768, s. 1.)

§ 65-62. Individual contracts for care and maintenance. — At the time of making a sale or receiving the initial deposit hereunder, the cemetery company shall deliver to the person to whom such sale is made, or who makes such deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, for reasonable costs of administering such care and maintenance and for reasonable costs of administering the trust fund. (1975, c. 768, s. 1.)

§ 65-63. 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 funds shall be equal to not less than twenty dollars (\$20.00) 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. 65-61 except as provided in G.S. 65-64. (1943, c. 644, s. 5; 1957, c. 529, s. 1; 1967, c. 1009, s. 3; 1971, c. 1149, s. 3; 1975, c. 768, s. 1.)

§ 65-64. Disposition of deposits when perpetual care fund amounts to \$150,000. — When the amount deposited in the perpetual care fund required by this Article 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 a separate fund which shall be an irrevocable trust and designated as Perpetual Care Trust Fund "A" and invested by trustee as directed by the cemetery, but may not be invested in another cemetery, and said deposits shall be not less than twenty dollars (\$20.00) per grave space.

For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State, provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund "A."

Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands not later than 10 days following the close of the calendar month in which payments were received as provided herein; however, the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring such payment regardless of whether all amounts have been received by the cemetery company. The care and maintenance trust fund shall be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of the superior court. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the said net income is not sufficient to pay such fees and other expenses, the same shall be paid by the cemetery company.

When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then said cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to ten dollars (\$10.00) per space for all spaces either previously sold or contracted for sale in said cemetery at the time of conversion or twenty-five thousand dollars (\$25,000), whichever sum is greater.

Each cemetery hereinafter established shall create a care and maintenance trust fund depositing therein an initial deposit of not less than fifteen thousand dollars (\$15,000) and submit proof thereof to the Commission prior to offering for sale any burial rights in grave spaces, niches or crypts.

In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of said burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of said burial rights can be determined from the accounting records of the cemetery company. (1943, c. 644,

s. 10; 1957, c. 529, s. 4; 1967, c. 1009, s. 10; 1971, c. 1149, s. 5; 1975, c. 768, s. 1.)

§ 65-65. Trust fund; financial reports. — Within 60 days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care fund on forms provided by the Commission. However, the Commission may require the trustee to make such additional financial reports as it may deem advisable. (1975, c. 768, s. 1.)

§ 65-66. Receipts from sale of personal property or services; trust fund; penalties. — (a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them, or for whom they are so purchased, unless such person or legal entity holds, controls or manages said funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities licensed under this Chapter that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a certificate under G.S. 65-36.1 through 65-36.8.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of, a deceased human being wherein the use of the personal property or the furnishing of the services is not immediately requested or required, shall deposit proceeds received on the contract as follows:

- (1) Into a trust fund administered by a corporate trustee in accordance with a written trust instrument.
 - (2) Seventy-five percent (75%) of all proceeds received on such contracts shall be deposited until the amount deposited equals seventy-five percent (75%) of the actual sale price of the property or services so sold.
 - (3) The deposit herein required shall be made into the trust fund so established on or before the tenth day of the month following receipt by the cemetery company or other entity from the purchaser.
 - (4) Each deposit into any such trust fund shall be identified by the cemetery company or other entity by furnishing the trustee with the name of the purchaser, the amount of the actual sales price and the amount of money required to be deposited, and with the initial deposit a statement of or a copy of the contract for the personal property and services to be furnished by the cemetery company thereunder. Nothing herein contained shall prohibit the trustee from commingling the deposits in any such trust fund for purposes of the management thereof and the investment of funds therein.
 - (5) The trust shall be operated in conformity with Chapter 36, North Carolina General Statutes, with respect to the nature and character of the trustee.
 - (6) In lieu of the deposits required herein, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made by purchasers who have not received the purchased property and services.
- (c) (1) The funds shall be held in trust both as to principal and income earned thereon and shall remain intact, except that the cost of the operation

of the trust may be deducted from the income earned thereon, until delivery of the property is made or the services are performed by the cemetery company or other entity. Upon delivery of the property or performance of the services, the cemetery company or other entity and the purchaser shall certify same to the trustee. Upon such certification, the amount of money on deposit to the credit of that particular contract, including principal and income earned thereon, shall be forthwith paid to the cemetery company or other entity. The trustee may rely upon all such certifications herein required to be made and shall not be liable to anyone for such reliance.

- (2) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income, if any, earned thereon by the trust fund.

(d) At any time prior to delivery of personal property or performance of services, a purchaser may make written demand for a refund of the amount deposited in trust to the credit of such purchaser, and within 30 days of receipt of such written demand the trustee shall refund to such purchaser the amount on deposit to his credit together with all interest, dividends, increases or accretions earned on such fund.

(e) Every year after September 1, 1975, the trustee shall, within 75 days after the end of the calendar year, file a financial report of the merchandise trust fund with the Commission, setting forth the principal thereof, the investments and payments made, and the income earned and disbursed; provided, however, that the Commission may require the trustee to make such additional financial reports as it may deem advisable.

(f) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of such examination shall be filed in the office of the Commission. Any persons or entities being examined shall produce the records of the company needed for such examination.

(g) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(h) Any cemetery company or other entity, as defined in this section, failing to make required contributions to the trust fund shall be guilty of a misdemeanor punishable as provided in G.S. 14-3, and each violation of this section shall constitute a separate offense.

(i) Nothing in G.S. 65-66 and subsections thereunder shall apply to persons or legal entities holding licenses or certificates under G.S. 65-36.1 and 65-36.8 when performing services or selling items authorized by said sections.

(j) If any report is not received within the time stipulated herein, the Commission may levy and collect a penalty of twenty-five dollars (\$25.00) per day for each day of delinquency. (1975, c. 768, s. 1.)

§ 65-67. Applications for license. — Applications for renewal license must be submitted on or before July 1 each and every year in the case of an existing cemetery company. Before any sale of cemetery property in the case of a new cemetery company or a change of ownership or control as indicated in G.S. 65-59, an application for license must be submitted and license issued. (1975, c. 768, s. 1.)

§ 65-68. License not assignable or transferable. — No license issued under G.S. 65-67 shall be transferable or assignable and no licensee shall develop or operate any cemetery authorized by this Article under any name or at any location other than that contained in the application for such license. (1975, c. 768, s. 1.)

§ 65-69. Minimum acreage; sale or disposition of cemetery lands. — (a) Each licensee shall set aside a minimum of 30 acres of land for use by said licensee as a cemetery, and shall not sell, mortgage, lease or encumber the same.

(b) The fee simple title, or lesser estate, in any lands owned by licensee and dedicated for use by it as a cemetery, which are contiguous, adjoining, or adjacent to the minimum of 30 acres described in subsection (a), may be sold, conveyed, or disposed of, or any part thereof, by the licensee, for use by the new owner for other purposes than as a cemetery; provided that no bodies have been previously interred therein; and provided further, that any and all titles, interests, or burial rights which may have been sold or contracted to be sold in such lands which are the subject of such sale shall be conveyed to and revested in the licensee prior to consummation of any such sale, conveyance or disposition.

(c) Any licensee may convey and transfer to a municipality or county its real and personal property together with moneys deposited with the trustee; provided said municipality or county will accept responsibility for maintenance thereof and prior written approval of the Commission is first obtained.

(d) The provisions of subsections (a) and (b) relating to a requirement for minimum acreage shall not apply to those cemeteries licensed by the Commission on or before July 1, 1967, which own or control a total of less than 30 acres of land; provided that such cemeteries shall not dispose of any of such lands. (1975, c. 768, s. 1.)

§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirement. —

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first such sale. The construction of such mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed one year, may be granted by the Commission for good reasons shown if a section of a mausoleum or a bank of belowground crypts shall contain more than 500 crypts.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust fund by written instrument and administered by a corporate trustee and operated in conformity with G.S. 65-66. This preconstruction fund shall be exclusive of the merchandise trust fund provided for in G.S. 65-66 of this Chapter or such other trust funds that may be required by law. The personal representative of any purchaser of such space who dies before completion of construction shall be entitled to a refund of all moneys paid for such space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust fund shall be computed as to said section or bank of crypts and such fund payments must be made within 30 days of receipt by the cemetery company or its agent of each payment. The fund portion of each such payment shall be computed by dividing the cost of the project plus twenty percent (20%) of said cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank

of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

$$\begin{array}{ll} \text{Cost plus 20 percent} \div & = \text{Cost per unit} \\ \text{Number of crypts} & \\ \text{Cost per unit} \div & = \text{Percentage} \\ \text{Contract sales price} & \\ \text{Percentage x payment received} & = \text{Deposit required to} \\ & \text{preconstruction fund.} \end{array}$$

(d) Upon completion of the mausoleum section or bank of underground crypts the cemetery company shall certify same to the trustee and shall be entitled to withdraw all funds deposited to the account thereof.

(e) If said mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the trustee shall contract for and cause said project to be completed and paid therefor from the trust funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction fund the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission. (1975, c. 768, s. 1.)

§ 65-71. Penalties. — (a) A person violating any provisions of this Article, or order or rule promulgated under the provisions thereof, or of any license issued by the Commission, shall be guilty of a misdemeanor and fined and imprisoned, or both, in the discretion of the court.

(b) The officers and directors or persons occupying similar status or performing similar functions of any cemetery company, cemetery sales organization, cemetery management organization or cemetery broker, as defined in this Chapter, failing to make required contributions to the care and maintenance trust fund and any other trust fund of escrow account provided herein, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished in the manner prescribed by law. (1943, c. 644, s. 14; 1967, c. 1009, s. 13; 1975, c. 768, s. 1.)

§ 65-72. Burial without regard to race or color. — (a) It shall be the public policy of the State that all cemetery companies or other legal entities conducting or maintaining public or private cemeteries shall sell to all applicants and bury all deceased human beings on equal terms without regard to race or color. Anything contrary hereto is void and of no legal effect. Bylaws, rules and regulations, contracts, deeds, etc., may permit designation of parts of cemeteries or burial grounds for the specific use of persons whose religious code required isolation. Any program offering free burial rights to veterans or any other person or group of persons shall not be conditioned by any requirement to purchase additional burial rights or merchandise.

(b) Any cemetery company or other legal entity violating the provisions of this section shall be guilty of a misdemeanor, punishable as provided in G.S. 14-3, and each violation of this section shall constitute a separate offense. (1975, c. 768, s. 1.)

Chapter 66.**Commerce and Business.****Article 1.****Regulation and Inspection.**

Sec.

66-11. Dealing in certain metals regulated; purchasing from minors; violations of section misdemeanor.

66-11.1. Transportation of copper.

Article 10.**Fair Trade.**

66-50 to 66-57. [Repealed.]

Article 11.**Government in Business.**

Sec.

66-58. Sale of merchandise by governmental units.

Article 17.**Closing-Out Sales.**

66-84. Counties within Article.

ARTICLE 1.***Regulation and Inspection.***

§ 66-11. Dealing in certain metals regulated; purchasing from minors; violations of section misdemeanor. — Every person, firm, or corporation buying railroad brasses or any composition metal specially used in the operation of trains, or brasses, composition metals, or copper or aluminum of the kind or quality used by manufacturing or power plants or by the communication or electric utility 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; 1975, c. 182, s. 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, inserted "or electric utility" near the middle of the first sentence.

§ 66-11.1. Transportation of copper. — It shall be unlawful for any person to transport or have in his possession on highways of this State, in any vehicle other than a vehicle used in the ordinary course of business for the purpose of transporting such copper, an amount of such copper of an aggregate weight of more than 25 pounds, unless such person shall have in his possession

(1) A bill of sale pertaining to such copper signed by (i) a holder of a sales and use tax registration number from the North Carolina Department

of Revenue; or (ii) an authorized wholesaler engaged in the sale of such copper; or (iii) a registered dealer in scrap metals; or (iv) a seller of antiques or objects of art; or

- (2) In the event the person from whom such copper was purchased was other than one of the above enumerated persons or firms, a certificate of origin signed by the sheriff, or his designated representative, of the county in which the purchase was made.

Such bill of sale or certificate of origin shall clearly identify the material to which it applies and show thereon the name and address of the seller, license plate of the vehicle in which such material is delivered to the purchaser, identified by license number, year and state of issue, the name and address of the purchaser, the date of sale, and the type and amount of such copper purchased.

Any person violating the provisions of this subsection [section] shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500.00) or be imprisoned for not more than six months. (1975, c. 182, s. 1.)

Editor's Note. — Session Laws 1975, c. 182, s. 4, makes the act effective July 1, 1975.

ARTICLE 10.

Fair Trade.

§§ 66-50 to 66-57: Repealed by Session Laws 1975, c. 172, effective July 1, 1975.

ARTICLE 11.

Government in Business.

§ 66-58. Sale of merchandise by governmental units.

(b) The provisions of subsection (a) of this section shall not apply to:

- (1) Counties and municipalities.
- (2) The Department of Human Resources or the Department of Agriculture for the sale of serums, vaccines, and other like products.
- (3) The Department of Administration, except that said agency shall not exceed the authority granted in the act creating the agency.
- (4) The State hospitals for the insane.
- (5) The Department of Human Resources.
- (6) The North Carolina School for the Blind at Raleigh.
- (7) The North Carolina School for the Deaf at Morganton.
- (8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State College,

and the other schools and colleges for higher education maintained or supported by the State.

- (9) The Department of Natural and Economic Resources, except that said Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction.
- (10) Child-caring institutions or orphanages receiving State aid.
- (11) Highlands School in Macon County.
- (12) The North Carolina State Fair.
- (13) Rural electric memberships corporations.
- (13a) State Farm Operations Commission.
- (14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided such leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.
- (15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for such tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies.

- (16) Laundry services performed by the Department of Corrections may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Corrections, or for which services have been contracted or applied for in writing, as of May 22, 1973.

Such services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by such institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by such institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Corrections, be processed by a dry-cleaning method.

- (c) The provisions of subsection (a) shall not prohibit:

- (1) The sale of products of experiment stations or test farms.
- (2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.
- (3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding

scholarships to defray the expenses of students attending the institution; provided, that the operation of such stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students and their immediate families, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.

- (4) The operation of lunch counters by the Department of Human Resources as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.
- (5) The operation of concession stands in the State Capitol during the sessions of the legislature.
- (6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.
- (7) The operation by penal, correctional or institutions for the care of the blind, or mentally or physically defective, or by the State Department of Agriculture, of dining rooms for the inmates or patients or members of the staff while on duty and for the accommodation of persons visiting such inmates or patients, and other bona fide visitors.
- (8) The sale by the Department of Agriculture of livestock, poultry and publications in keeping with its present livestock and farm program.
- (9) The operation by the public schools of school cafeterias.
- (10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.
- (11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.
- (12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.
- (13) The operation by the Department of Correction of forestry management programs on state-owned lands, including the sale on the open market of timber cut as a part of such management program.
- (14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.
- (15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.

(f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Department of Correction of facilities for the manufacture of any product or the providing of any service pursuant to G.S. 148-70 not regulated by the provisions of subsection (c) hereof, shall be subject to the prior approval of the Advisory Budget Commission, with biennial review by the General Assembly,

at the beginning of each fiscal year commencing after October 1, 1975. The Department of Correction shall file with the Director of the Budget quarterly reports detailing prison enterprise operations in such a format as shall be required by the Advisory Budget Commission. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1939, c. 122; 1941, c. 36; 1951, c. 1090, s. 1; 1957, c. 349, ss. 6, 10; 1967, c. 996, s. 13; 1973, c. 476, ss. 48, 128, 143; c. 671, s. 1; c. 965; c. 1262, s. 86, c. 1294; c. 1457, s. 7; 1975, c. 730, ss. 2-5; c. 840; c. 879, s. 46.)

Editor's Note. —

The first 1975 amendment, effective Oct. 1, 1975, added subdivision (b)(15), which was formerly § 148-8, and inserted "for the State and local governments" near the end of the first paragraph of that subdivision, and added subdivision (b)(16), which was formerly § 148-8.1, and subdivisions (c)(13), (c)(14), (c)(15) and subsection (f).

The second 1975 amendment inserted "to

other campus stores" in the second sentence of subdivision (c)(3).

The third 1975 amendment, effective July 1, 1975, substituted "Department of Administration" for "Division of Purchase and Contract" in subsections (b)(3) and (b)(14).

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

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, Hoke, Iredell, Jackson, Johnston, Lee, McDowell, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, 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; 1973, c. 1072; 1975, cc. 60, 440.)

Editor's Note. —

The first 1975 amendment inserted Rowan, and the second 1975 amendment inserted Johnston, in the list of counties.

Chapter 69. Fire Protection.

Article 3A.

Rural Fire Protection Districts.

Sec.

69-25.2. Duties of county board of commissioners regarding conduct of elections; cost of holding.

ARTICLE 3A.

Rural Fire Protection Districts.

§ 69-25.2. Duties of county board of commissioners regarding conduct of elections; cost of holding. — The board of county commissioners, after consulting with the county board of elections, shall set a date for the election by resolution adopted. The county board of elections shall hold and conduct the election in the district. The county board of elections shall advertise and conduct said election, in accordance with the provisions of this Article and with the procedures prescribed in Chapter 163 governing the conduct of special and general elections. No new registration of voters shall be required, but the deadline by which unregistered voters must register shall be contained in the legal advertisement to be published by the county board of elections. The cost of holding the election shall be paid by the county. (1951, c. 820, s. 2; 1975, c. 706.)

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

ARTICLE 4.

Hotels; Safety Provisions.

§ 69-29. Automatic sprinklers.

Legislative Intent. — There is a legislative intent to provide a complete and integrated regulatory scheme, including regulations as to the installation of sprinkler systems, in all buildings and structures, wherever situate in North Carolina, except as expressly exempted by statute. *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

Regulatory Authority in Building Code Council. — The intent to vest controlling regulatory authority in the Building Code Council appears within the provisions of this section in that the legislature provided that the installation of the sprinkler systems required by statute must ultimately be of such design,

condition and scope "as may be approved by the North Carolina Building Code Council." *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

City Ordinance. — An interpretation of § 160A-174 to allow a city ordinance requiring sprinkler systems, thus empowering a city to ignore explicit statewide legislative enactments, would, in effect, permit a city to amend the North Carolina Building Code by the simple expedient of codifying a contested ordinance as a part of its fire prevention code and thereby to evade the clear requirements of § 143-138(e). *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

Chapter 72.

Inns, Hotels and Restaurants.

Article 4.

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

Sec.
72-39. [Repealed.]

ARTICLE 4.

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

§ 72-39: Repealed by Session Laws 1975, c. 402.

ARTICLE 5.

Sanitation of Establishments Providing Food and Lodging.

§ 72-49. Private homes; temporary food and drink stands operated by church, etc.; boardinghouses, private clubs, picnics, camp meetings, etc.

Private Clubs Are Establishments Which Maintain Selective Membership, Are Operated by the Membership and Are Not Profit Oriented. — See opinion of Attorney General to

Mr. John Andrews, Head, Sanitation Branch, Division of Health Services, 44 N.C.A.G. 182 (1974).

Chapter 74.**Mines and Quarries.****Article 1.****Operation of Mines and Quarries.**

Sec.

74-1 to 74-14. [Repealed.]

Article 2.**Inspection of Mines and Quarries.**

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ARTICLE 1.***Operation of Mines and Quarries.***

§§ 74-1 to 74-14: Repealed by Session Laws 1975, c. 206, s. 21, effective January 1, 1976.

ARTICLE 2.***Inspection of Mines and Quarries.***

§§ 74-15 to 74-24: Repealed by Session Laws 1975, c. 206, s. 21, effective January 1, 1976.

ARTICLE 2A.***Mine Safety and Health Act.***

§ 74-24.1. **Short title and legislative purpose.** — (a) This Article shall be known as the Mine Safety and Health Act of North Carolina.

(b) Legislative findings and purpose:

(1) The General Assembly finds that the burden of operators and miners of this State's mines resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope in attaining this objective lies in programs of research, engineering, education, and enforcement, and in earnest cooperation of the federal and state governments, operators, and miners.

(2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to assure so far as possible every worker in North Carolina's mines safe and healthful working conditions and to preserve our human resources:

a. By encouraging operators and miners in their effort to reduce the number of occupational safety and health hazards in mines and to

stimulate and assist operators and miners to institute new programs and to perfect existing programs for providing safe and healthful working conditions through technical assistance and consultation;

- b. By recognizing that operators and miners have separate but interdependent responsibilities and rights with respect to achieving safe and healthful working conditions;
- c. By authorizing the Commissioner to develop occupational safety and health standards applicable to mines giving consideration to the needs of operators and miners and to adopt standards promulgated from time to time by the federal government;
- d. By providing occupational health criteria which will assure insofar as practicable that no miner will suffer diminished health, functional capacity, or life expectancy as a result of his work experience in a mine;
- e. By providing education and training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
- f. By providing an effective enforcement program which shall include a prohibition against giving advance notice of a mine inspection;
- g. By providing for appropriate reporting procedures with respect to occupational safety and health which will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problems in mines;
- h. By providing for research and technical assistance in the field of occupational safety and health in mines and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems in mines; and
- i. By authorizing the Commissioner to enter into agreements and contracts with public and private agencies, including agencies of the United States government, organizations, and individuals in order to carry out the ends and purposes of this Article.

(c) The General Assembly of North Carolina appoints the North Carolina Department of Labor as the designated agency to administer the Mine Safety and Health Act of North Carolina. (1975, c. 206, s. 1.)

Editor's Note. — Session Laws 1975, c. 206, s. 21, makes the act effective Jan. 1, 1976.

§ 74-24.2. Definitions. — In this Article, unless the context otherwise requires:

- (1) The term "accident" means an unexpected event resulting in injury to, illness of, or death of a person or persons as a result of mining operations and any mine explosion, mine ignition, mine fire, mine inundation, mine cave-in, or other event which could have readily resulted in serious physical harm.
- (2) The term "Advisory Council" shall mean the Advisory Council or body authorized to be established under this Article.
- (3) The term "agent" means any person charged by the operator with responsibility for the operation of all or part of a mine or supervision of the miners in a mine, and for the purposes of this Article includes contractors, subcontractors, or independent contractors employed by the operator to perform any work or services at, in, or on the mine.
- (4) The term "Commissioner" means the Commissioner of Labor of North Carolina.

- (5) The term "Director" means the person authorized under G.S. 74-24.19 and appointed by the Commissioner for the purpose of assisting in the administration of this Article.
- (6) The term "imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious physical harm immediately to any miner if such condition or practice is not abated at once.
- (7) The term "mine" means an area of land and all private ways and roads appurtenant thereto, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed or constructed on, under, or above the surface of such land by any person, used in, or to be used in, or resulting from (including the reclamation of mined areas or the storage of materials in mined areas), or to facilitate the work of exploring for, developing of, or extracting by any means or method in such area all minerals, inorganic and organic, from their natural deposits. The term "mine" also includes all mineral processing and milling facilities except those used in the processing of source materials as defined in the Atomic Energy Act of 1954, as amended.
- (8) The term "miner" means any individual, other than an operator or an agent, working in or about a mine.
- (9) The term "operator" means an individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization owning, operating, leasing, controlling, or supervising a mining operation.
- (10) The term "repeated violation" means a violation for which an operator was issued a notice or an order on an inspection and which is found to exist again on the next regular inspection, even though the violation was abated within the time fixed for abatement.
- (11) The term "State" means the State of North Carolina. (1975, c. 206, s. 2.)

§ 74-24.3. **Coverage.** — Each mine shall be subject to the provisions of this Article, and each operator of such mine shall comply with all standards, rules, regulations, orders, and notices adopted or issued under this Article. The operator of such mine shall be responsible for the health and safety of all miners in a mine and shall assure insofar as practicable conditions of work and places of work free from hazards that are causing or are likely to cause death or serious physical harm. (1975, c. 206, s. 3.)

§ 74-24.4. **Safety and health standards.** — (a) The Commissioner shall develop, adopt, revise, and promulgate safety and health standards for the purpose of the protection of life, the promotion of safety and health, and the prevention of "accidents" in mines which are subject to this Article. In the development of safety and health standards, the Commissioner shall consult with the Advisory Council, interested federal agencies, appropriate representatives of other State agencies, appropriate representatives of mine operators and miners, and other interested persons and organizations whose participation would further the purposes of this Article.

(b) In developing and promulgating safety standards pursuant to this section, the Commissioner shall include standards with respect to the training of miners in first aid, safety, the proper use of rescue equipment available within mines, and periodic evacuation drills and disaster procedure training.

(c) The Division of Health Services of the Department of Human Resources shall have primary responsibility for research and the recommendation of health standards to the Commissioner to effectuate the purposes of this Article, and nothing in this subsection shall affect the authority of the Commissioner with

respect to the promulgation and enforcement of both safety and health standards.

(d) The procedures utilized for the adoption and promulgation of safety and health standards, including notice and public hearings, shall be in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 206, s. 4.)

§ 74-24.5. Modification of safety and health standards. — Upon petition by an operator, a representative of miners, or a miner, the Commissioner may modify the application of any safety and health standard to a mine if the Commissioner determines that an alternative method of protecting the miners will guarantee the same measure of protection afforded the miners by the standard, or will enhance the level of safety and health provided by that standard. Upon receipt of such petition the Commissioner shall give public notice thereof and give notice to the operator, the representative of miners, or the miner in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of such operator, representative of the miners, or miner to enable the operator, the representative of miners, or miner in such mine or any interested party to present information relating to the modification of such standard. The Commissioner shall issue a decision incorporating his findings of fact therein and send a copy thereof to the operator, the representative of the miners, or miner as appropriate. Any such hearing shall be of record and shall be subject to judicial review in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 206, s. 5.)

§ 74-24.6. Advisory Council. — (a) The Commissioner shall appoint an Advisory Council consisting of seven members to assist him in the development of safety and health standards for mines which are subject to this Article and to advise him on matters relating to safety and health in such mines. Said Advisory Council shall include three members expressly qualified by experience and affiliation to present the viewpoint of operators of such mines, three persons similarly qualified to present the viewpoint of workers in such mines, and a chairman. The members of the Advisory Council shall serve at the pleasure of the Commissioner and shall have no specific term of office.

(b) The Advisory Council shall hold not fewer than two meetings during each calendar year, and said meetings shall be open to the public. The Commissioner shall furnish to the Advisory Council such secretarial, clerical, and other services as he deems necessary to conduct its business.

(c) The members of the Advisory Council shall be compensated for travel expenses and per diem as authorized by the Advisory Budget Commission in accordance with those amounts paid to State boards under Chapter 138 of the General Statutes.

(d) The Commissioner may from time to time select representatives of professional organizations of technicians, professional persons specializing in occupational safety and health, and representatives of State agencies who by experience and affiliation are qualified to present the viewpoint of operators of mines and workers in mines to assist the Advisory Council in performing its duties. Such persons, except State employees, selected for temporary purposes may be paid such per diem and travel expenses for attending meetings as may be fixed by the Advisory Budget Commission and recommended by the Commissioner. (1975, c. 206, s. 6.)

§ 74-24.7. Inspections and investigations. — (a) The Commissioner through the Director shall make as many inspections and investigations in mines each year as are deemed necessary to effectively and accurately fulfill the requirements of:

- (1) Obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of "accidents" and causes of illnesses and physical impairments originating in such mines,
- (2) Gathering information with respect to the necessity for health and safety standards,
- (3) Determining whether an imminent danger exists,
- (4) Determining whether or not there is compliance with safety and health standards or with any notice, order, or decision issued under this Article.
- (5) In carrying out the requirements of (4) of this subsection, no advance notice of an inspection shall be provided to any mine operator, official, miner, representative of the miners, or other person, except that the Commissioner or Director may authorize the giving of advance notice only when such notice is essential to the effectiveness of the inspection.

(b) For the purpose of making any inspection or investigation under this Article, the Commissioner or his authorized representative shall have a right of entry to, upon, or through any mine at reasonable times.

(c) For the purpose of making any investigation of any "accident" relating to safety and health in a mine, the Commissioner may, after notice, hold hearings, and may issue subpoenas for the attendance and testimony of persons and the production of relevant documents, and administer oaths in any investigation conducted by him. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the general court of justice, superior court division, of the county in which such person is found or resides or transacts business, upon application by the Commissioner and after notice to such person, shall have jurisdiction to determine whether such person shall be punished as for contempt of court.

(d) In the event of an "accident" occurring in a mine, the operator shall notify the Commissioner or the Director thereof at such time as may be required and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any "accident" occurring in a mine where rescue and recovery work is necessary, the Commissioner through the Director shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(e) In the event of any "accident" occurring in a mine, the Commissioner through the Director may issue such orders as he deems appropriate to insure the safety of any person in the mine, and the operator of such mine shall obtain the approval of the Commissioner or his authorized representative in consultation with appropriate federal representatives, when feasible, of any plan to recover any person in the mine or to recover the mine or to return affected areas of the mine to normal.

(f) Whenever any miner or representative of the miners has reasonable grounds to believe that a violation of a safety or health standard exists, or that an imminent danger exists, such miner or representative of the miners may request an inspection by giving notice to the Commissioner or the Director of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall show the name of the miner, be signed by the miner or representative of the miners, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that, upon request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy. If, after receipt of such notification, the Commissioner finds that there are reasonable grounds to believe a violation may exist, a special inspection shall be made as soon as practicable to determine if, in fact, such violation or danger does exist under the provisions of this Article.

(g) At the commencement of any inspection of a mine by the Commissioner or his authorized representative, under subsection (a)(3) or subsection (a)(4) of this section, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the Commissioner or his authorized representative on such inspection, to inform the Commissioner or his authorized representative of conditions and practices in the mine, without loss or deduction in pay. Where there is no authorized representative of the miners, the Commissioner or his authorized representative shall have the right to consult with a reasonable number of miners concerning matters of safety and health in the work place. (1975, c. 206, s. 7.)

§ 74-24.8. Findings, notices, and orders. — (a) (1) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that an imminent danger exists, he shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines such imminent danger no longer exists.

(2) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that an imminent danger exists with respect to the condition or manner of use of any equipment, machinery, article, or apparatus, he shall thereupon issue an order requiring the operator or his agent to cause immediately such equipment, machinery, article, or apparatus to be withdrawn from, and to be prohibited from, use or operation until the Commissioner or his authorized representative determines that such imminent danger no longer exists.

(3) As a result of any investigation of any "accident" or as a result of any other investigation or tests performed, the Commissioner or his authorized representative may cause to be withdrawn and prohibited from use or operation in any mine any equipment, machinery, article, or apparatus the use of which is likely to cause serious physical harm or an "accident" until the Commissioner or his authorized representative determines that such equipment, machinery, article, or apparatus has been repaired, modified, reconditioned, or altered in such manner that "accidents" or serious physical harm will thereafter be avoided.

(b) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that there has been a violation of any safety and health standard but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period as originally fixed or subsequently extended, the Commissioner or his authorized representative finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines that the violation has been abated.

(c) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that there has been a repeated violation of a safety or health standard which could reasonably be expected to result in serious physical harm to any miner, he shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering,

such area until the Commissioner or his authorized representative determines that the violation has been abated.

(d) The following persons may enter, upon approval of the Commissioner or his authorized representative, any area of a mine subject to an order issued under this section:

- (1) Any person whose presence in such area is necessary, in the judgment of the operator or the Commissioner or his authorized representative, to eliminate the condition described in the order;
- (2) A public official whose official duties require him to enter such area;
- (3) A representative of the miners in such mine who, in the judgment of the operator or the Commissioner, or his authorized representative, is qualified to make mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the condition described in the order;
- (4) A consultant to any of the foregoing.

(e) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any safety or health standard and where appropriate, a description of the area of the mine from which persons must be withdrawn and prohibited from entering, and a description of the equipment, machinery, article, or apparatus which shall be withdrawn and prohibited from use or operation.

(f) A notice or order issued pursuant to this section may be modified, vacated, or terminated upon review by the Commissioner or his authorized representative. (1975, c. 206, s. 8.)

§ 74-24.9. Issuance and delivery of notices, orders, and decisions. — (a) All notices or orders issued under G.S. 74-24.8 shall be in writing, signed by the Commissioner or his authorized representative, and shall be given promptly to the operator of the mine.

(b) In order to insure prompt compliance with all notices, orders, or decisions issued under this Article, the Commissioner or his authorized representative may deliver such notices, orders, or decisions to an agent of the operator, and such agent shall immediately take appropriate measures to insure compliance with such notice, order, or decision.

(c) Each operator of a mine shall file with the Commissioner the name and address of such mine and the name and address of the operator of the mine. Any revisions in such names or addresses shall be promptly filed with the Commissioner. Each operator of a mine shall designate a responsible official, and shall file the name and address of said official with the Commissioner, as the principal officer in charge of safety and health at such mine, and such official shall receive a copy of any notice, order, or decision issued under this Article affecting such mine. In any case, where the mine is subject to the control of any person not directly involved in the daily operations of the mine, there shall be filed with the Commissioner the name and address of such person and the name and address of a principal official who shall have overall responsibility for the conduct of an effective safety and health program at any mine subject to the control of such person, and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a safety and health official under this subsection shall not be construed as making such official subject to any penalty under this Article. (1975, c. 206, s. 9.)

§ 74-24.10. Review by the Commissioner. — (a) An operator issued a notice or order pursuant to the provisions of G.S. 74-24.8 and 74-24.9 may apply to the Commissioner for review of the notice or order within 30 days of receipt thereof or within 30 days of its modification.

- (1) The applicant, at the same time, shall send a copy of such application to the representative of the miners, if any, in the mine or all affected miners.
- (2) Upon a receipt of such application, the Commissioner shall cause such investigations to be made as he deems appropriate. Such investigations shall provide an opportunity for a public hearing, at the request of the operator or the representative of the miners in such mine or affected miners, to enable the operator or the representative of the miners in such mine or affected miners to present information relating to the issuance and continuance of such notice or order, or the modification, vacation, or termination thereof.
- (3) The operator and the representative of the miners, if any, or affected miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to the rules of evidence applicable in the district and superior courts of this State. Interested parties shall have an opportunity to appear, present evidence, and examine witnesses.

(b) Upon receiving the report of such investigation, the Commissioner shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating any notice or order issued.

(c) In view of the urgent need for prompt decision of matters submitted to the Commissioner under this section, action shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

(d) All notices and orders issued under this Article shall be stayed while such notice or order is under review, except that orders issued under G.S. 74-24.8(a) shall not be stayed. (1975, c. 206, s. 10.)

§ 74-24.11. Judicial review. — Any final order or decision issued by the Commissioner under this Article shall be subject to judicial review in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 206, s. 11.)

§ 74-24.12. Injunctions. — The Commissioner through the Director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the superior court of the county in which a mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (i) violates or fails or refuses to comply with any final order or decision issued under this Article or (ii) interferes with, hinders, or delays the Commissioner in carrying out the provisions of this Article, or (iii) refuses to admit the Commissioner or his authorized representative to the mine, or (iv) refuses to permit the inspection of the mine, or the investigation of an accident or occupational illness occurring in, or connected with, such mine, or (v) refuses to furnish any information or report requested by the Commissioner in furtherance of the provisions of this Article. (1975, c. 206, s. 12.)

§ 74-24.13. Mandatory reporting. — Under such regulations as he may prescribe, the Commissioner shall require that:

- (1) Operators of mines which are subject to this Article submit, at least annually and at such other times as he deems necessary, and in such form as he may prescribe, reports of "accidents," injuries, occupational disease, and related data, and the Commissioner through the Director shall compile, analyze, and publish, either in summary or detailed form, the information obtained; and all information, reports, orders, or findings, obtained or issued under this Article may be published and released to any interested person, and shall be made available for public inspection.

- (2) All "accidents" shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such "accidents" and investigations shall be kept, and the information shall be made readily available for inspection by the Commissioner or his authorized representative. Such records shall include man-hours worked and shall be reported for periods determined by the Commissioner, but at least annually.
- (3) The operators of mines which are subject to this Article shall notify the Commissioner, before starting operations, of the approximate or actual date mine operations will commence. The notification shall include mine name, location, the company name, mailing address, the person in charge, and whether operations will be continuous or intermittent. When any mine subject to this Article is closed, the operator shall notify the Commissioner of such closure and indicate whether the closure is temporary or permanent. (1975, c. 206, s. 13.)

§ 74-24.14. Criminal penalties. — Any person who (i) willfully violates any standard, order, notice, decision, rule, or regulation issued under authority of this Article, and said violation causes death or serious physical harm to another; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Article or required by any order, notice, or decision issued under this Article; (iii) knowingly distributes, sells, offers for sale, introduces, or delivers any equipment, machinery, article, or apparatus which is represented as complying with the provisions of this Article, or with any specification or regulation of the Commissioner applicable to such equipment, machinery, article, or apparatus and knowing it does not so comply, shall be guilty of a misdemeanor and upon conviction thereof be punished for each such offense by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment not to exceed 60 days, or both. In any instance in which such offense is committed by a corporation, the officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both. (1975, c. 206, s. 14.)

§ 74-24.15. Rights and duties of miners. — (a) Miners shall comply with all safety and health standards and all rules, regulations, or orders issued pursuant to this Article which are applicable to their own actions and conduct.

(b) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (i) has notified the Commissioner of any alleged violation or danger, (ii) has filed, instituted, or caused to be filed or instituted any proceeding under this Article, or (iii) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Article.

(c) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after such violation occurs, apply to the Commissioner for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Commissioner shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to the rules of evidence applicable in the district and superior courts of this State. Interested persons

shall have an opportunity to appear, present evidence, and examine witnesses. Upon receiving the report of such investigation, the Commissioner shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Commissioner deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Commissioner's findings therein. Any order issued by the Commissioner under this subsection shall be subject to judicial review in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. Enforcement of a final order or decision issued under this subsection shall be subject to the provisions of G.S. 74-24.12.

(d) Whenever an order is issued under this section at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commissioner to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation. (1975, c. 206, s. 15.)

§ 74-24.16. Education, training, technical assistance, and research. — (a) The Commissioner through the Director is authorized to develop and conduct expanded programs for the education, training, and technical assistance of operators and miners in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions and to conduct such research as may be necessary in mines which are subject to this Article.

(b) The Commissioner is authorized to conduct, directly or by grants, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this Article.

(c) In carrying out the provisions of this Article, the Commissioner is authorized to enter into agreements and contracts with, and accept grants from and make grants to, public and private agencies and organizations and individuals. (1975, c. 206, s. 16.)

§ 74-24.17. State-federal plan. — In order to promote sound and effective coordination in State and federal activities within the field covered by this Article, the Commissioner is hereby authorized to enter into and, from time to time, to amend or terminate a State-federal plant agreement with the federal agency charged with administering laws relating to safety and health in mines. (1975, c. 206, s. 17.)

§ 74-24.18. Legal representation. — It shall be the duty of the Attorney General of North Carolina to represent the Department of Labor in all actions or proceedings in connection with this Article. (1975, c. 206, s. 18.)

§ 74-24.19. Administrative provisions. — (a) The Commissioner shall appoint a Director to assist him in administering the provisions of this Article and, through the Director, shall have authority to appoint, subject to Chapter 126 of the General Statutes of North Carolina, such officers, engineers, inspectors, and employees as he deems requisite for the administration of this Article; and to prescribe powers, duties, and responsibilities of all officers, engineers, inspectors, and employees engaged in the administration of this Article.

(b) All persons appointed as representatives of the Commissioner shall be qualified by practical experience in mine safety and health administration or practical experience in mining or by experience as a practical mining engineer or by education. All persons so appointed shall be physically able to perform their duties predicated on their work assignments, and all persons subject to

making inspections, investigations, or participating in rescue and recovery work shall be examined prior to their employment and annually thereafter by a physician who shall certify their physical ability to perform their duties in mines subject to this Article. The fee for the required annual examination shall be satisfied as recommended by the Commissioner.

(c) The Commissioner, the Director, or any other officer, engineer, inspector, or employee engaged in the administration of this Article shall not, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation, financial or otherwise, with any operating mining company, operator's association, or labor union. (1975, c. 206, s. 19.)

§ 74-24.20. Construction of Article and severability. — This Article shall receive a liberal construction to the end that the safety and health of miners in the State may be effectuated and protected. If any provision of this Article or the application thereof to any person or circumstance is held to be 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 severable. (1975, c. 206, s. 20.)

ARTICLE 6.

Mining Registration.

§ 74-44. Rules and regulations of Mining Commission.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 7.

The Mining Act of 1971.

§ 74-62. Judicial review.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 74-63. Rules and regulations.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 74B.

Private Protective Services Act.

Sec.	Sec.
74B-4. Private Protective Services Board established; members, terms, vacancies.	74B-13. Registration of persons employed.
74B-10. Applications for and issuance of license.	74B-15. Prohibited acts.
74B-11. Form of license; term; renewal; posting; not assignable.	74B-16. Penal provision.

§ 74B-4. Private Protective Services Board established; members, terms, vacancies. — (a) The Private Protective Services Board is hereby established and hereinafter called "the Board" in the Department of Justice. The Board shall consist of five members who shall be the Director of the North Carolina State Bureau of Investigation; one person who shall be selected by the Attorney General of North Carolina, and who shall not be a licensee under this Chapter, and shall serve a term of two years; one person appointed by the Governor to serve a term of four years, and who shall not be a licensee under this Chapter; two persons who shall be selected by the President pro tem of the Senate and the Speaker of the House, respectively, who are licensees under this Chapter.

The chairman of the Board shall be chosen by the members of the Board, and shall serve for a term of one year, and shall be eligible for reelection. The Attorney General of North Carolina shall select someone who is not a licensee under this Chapter, to serve a term of two years beginning July 1, 1973. The Governor of North Carolina shall appoint one member who shall not be a licensee under this Chapter in North Carolina, to serve a term of four years beginning July 1, 1973. The President pro tem of the North Carolina Senate shall select someone who is a licensee under this Chapter to serve a term of two years beginning July 1, 1973. The speaker of the North Carolina House of Representatives shall select someone who is a licensee under this Chapter to serve a term of four years beginning July 1, 1973.

(1975, c. 592, ss. 8, 9.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "chairman" following "Director of the North Carolina State

Bureau of Investigation" in the first paragraph of subsection (a) and rewrote the first sentence of the second paragraph of that subsection.

§ 74B-7. Powers of Board.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 74B-10. Applications for and issuance of license.

(f) Upon notification of approval by the Private Protective Services Board, applicant must within 60 days obtain the license applied for or his application shall be void. (1973, c. 47, s. 2; c. 528, s. 1; 1975, c. 592, s. 1.)

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

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

§ 74B-11. Form of license; term; renewal; posting; not assignable. — (a) The license when issued shall be in such form as may be determined by the Board and shall state:

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

(b) The license shall be issued for a term of two years and shall be renewable, unless the license shall have been previously revoked in accordance with the provisions of this Chapter. A trainee permit shall be issued for a term of one year and may be renewed yearly at the discretion of the Board. 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 Chapter is not assignable.

(c) Application and license fees are as follows:

- (1) Fifty-dollar (\$50.00) nonrefundable application fee.
- (2) Two-hundred-dollar (\$200.00) fee for a new or renewed license.
- (3) Fifty dollars (\$50.00) for annual trainee permit, which may be renewed three times.
- (4) Twenty-five-dollar (\$25.00) fee for each license in addition to the two-hundred-dollar (\$200.00) basic license.
- (5) Ten-dollar (\$10.00) registration fee (nontransferable) for a security guard paid by the guard for each registration.

(d) The operator or manager of any branch office shall be properly licensed and his license shall be posted at all times in a conspicuous place in the office.

(e) A license granted under the provisions of this Chapter may be renewed by the Private Protective Services Board upon notification by licensee to the administrator of intended renewal and the payment of the proper fee specified in G.S. 74B-11(c). The renewal shall be finalized before the expiration date of the license unless the renewal is accompanied by a late renewal fee of one hundred dollars (\$100.00). In no event will renewal be granted more than three months after date of expiration of a license. No person, firm, company, partnership or corporation shall carry on any business subject to this Chapter during any period which may exist between the date of expiration of a license and the renewal thereof.

All fees collected pursuant to this section shall be expended, under the direction of the Board, for the purposes of defraying the expenses of administering this Chapter. (1973, c. 528, s. 1; c. 1428; 1975, c. 592, ss. 2-4.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted the fourth sentence of subsection (b) and added subsections (d) and (e).

§ 74B-13. Registration of persons employed.

(c) The administrator shall be notified in writing of the termination of any employee registered under this Chapter within 30 days after said termination. (1973, c. 528, s. 1; 1975, c. 592, s. 5.)

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

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

§ 74B-14. Suspension or revocation of licenses; appeal.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 74B-15. Prohibited acts.

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

(e) Every licensee shall file in writing with the Board 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.

(1975, c. 19, s. 19; c. 592, s. 6.)

Editor's Note. —

The first 1975 amendment corrected an error in Session Laws 1973, c. 528, s. 1, by substituting "the" for "this" preceding "employer" in subsection (b).

The second 1975 amendment, effective July 1,

1975, deleted the second sentence of subsection (e).

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

§ 74B-16. Penal provision. — Any person who violates any provision of this Chapter or any rule or regulation promulgated pursuant thereto shall be guilty of a misdemeanor and shall upon conviction be fined or imprisoned or both at the discretion of the court. (1973, c. 528, s. 1; 1975, c. 592, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, inserted "or any rule or regulation promulgated pursuant thereto."

Chapter 75.**Monopolies, Trusts and Consumer Protection.****§ 75-1.1. Methods of competition, acts and practices regulated; legislative policy.**

Legislative Intent. — It was the clear intention of the General Assembly in enacting this section and § 75-16, among other things, to declare deceptive acts or practices in the conduct of any trade or commerce in North Carolina unlawful, to provide civil means to maintain ethical standards of dealings between persons engaged in business and the consuming public

within this State and to enable a person injured by deceptive acts or practices to recover treble damages from a wrongdoer. *Hardy v. Toler*, 24 N.C. App. 625, 211 S.E.2d 809 (1975).

Applied in *Smith v. Ford Motor Co.*, 26 N.C. App. 181, 215 S.E.2d 376 (1975); *Harrington Mfg. Co. v. Powell Mfg. Co.*, 26 N.C. App. 414, 216 S.E.2d 379 (1975).

§ 75-16. Civil action by person injured; treble damages.

Legislative Intent. — It was the clear intention of the General Assembly in enacting § 75-1.1 and this section, among other things, to declare deceptive acts or practices in the conduct of any trade or commerce in North Carolina unlawful, to provide civil means to maintain

ethical standards of dealings between persons engaged in business and the consuming public within this State and to enable a person injured by deceptive acts or practices to recover treble damages from a wrongdoer. *Hardy v. Toler*, 24 N.C. App. 625, 211 S.E.2d 809 (1975).

Chapter 75A.
Boating and Water Safety.

Article 1.
Boating Safety Act.

Sec. States regulations; award of
certificates; records; renewal of
certificates; transfer of interest,
abandonment, etc.; change of
address; unauthorized numbers.
75A-6. Classification and required lights and
equipment; rules and regulations.
75A-8. Boat liveryes.

Sec.
75A-2. Definitions.
75A-5. Application for numbers; fee;
displaying; reciprocity; change of
ownership; loss of certificate;
presumption from possession of
certificate; conformity with United

ARTICLE 1.
Boating Safety Act.

§ 75A-2. Definitions. — As used in this Chapter, unless the context clearly requires a different meaning:

(1) "Motorboat" means any vessel equipped with propulsion machinery of any type, whether or not such machinery is the principal source of propulsion: Provided, that "propulsion machinery" as used in this section shall not include an electric motor when used as the only means of mechanical propulsion of any vessel: Provided further, that the term "motorboat" shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.

(1975, c. 340, s. 1.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, rewrote subdivision (1).
As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

§ 75A-5. Application for numbers; fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer of interest, abandonment, etc.; change of address; unauthorized numbers. — (a) The owner of each motorboat requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner of the motorboat, or his agent, and shall be accompanied by a fee of three dollars (\$3.00) for a one-year period or by a fee of seven dollars and fifty cents (\$7.50) for a three-year period. The applicant shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall have the same entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the motorboat immediately following the number. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation. Provided, however, any person

charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest.

(h) Each certificate of number awarded pursuant to this Chapter must be renewed on or before January 1 of the year following the expiration of the period for which the motorboat was numbered; otherwise, such certificate shall lapse and be void. Application for renewal shall be submitted on forms approved by the Wildlife Resources Commission and shall be accompanied by a fee of three dollars (\$3.00) for a one-year period or by a fee of seven dollars and fifty cents (\$7.50) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing boats as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section.

(1975, c. 483, ss. 1, 2.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, in subsection (a), substituted "owner of the motorboat, or his agent" for "owner, or his agent, of the motorboat" in the second sentence, added the language beginning "for a one-year period" at the end of that sentence, added the present third and seventh sentences, and added the language beginning "and a validation decal" to the end of the present fourth sentence. The amendment

also, in subsection (h), substituted the language beginning "on or before January 1" and ending "period for which the motorboat was numbered" for "each year on or before January 1" in the first sentence and inserted the language beginning "for a one-year period" and ending "three-year period" in the second sentence.

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

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

(m) In the event that any of the regulations of subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of this section are in conflict with the equipment regulations of the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto, the Wildlife Resources Commission is hereby granted the authority to adopt such regulations as are necessary to conform with the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto.

(n) All boats propelled by machinery of 10 hp or less, which are operated on the public waters of this State, shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, and from 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.

(1975, c. 340, s. 2; c. 483, s. 3.)

Editor's Note. —

The first 1975 amendment, effective Jan. 1, 1976, deleted, at the end of subsection (n), a proviso to the effect that the provisions of that subsection should not be construed so as to conflict with or repeal any of the other requirements or provisions of this Chapter.

The second 1975 amendment, effective Jan. 1,

1976, substituted "Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto" for "Federal Motorboat Act of 1958 as amended" twice in subsection (m).

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

§ 75A-8. Boat liveryes. — It shall be unlawful for the owner of a boat livery to rent a motorboat to any person unless the provisions of this Chapter have been complied with. It shall be the duty of owners of boat liveryes to equip all motorboats rented as required by this Chapter. (1959, c. 1064, s. 8; 1975, c. 340, s. 3.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, substituted "motorboat" for "boat equipped with more than 10 horsepower" in the first sentence.

Chapter 76.**Navigation.****Article 1.****Cape Fear River.**

Sec.

76-1. Board of commissioners of navigation and pilotage.

76-14. Rates of pilotage.

76-18. [Repealed.]

Article 2.**Beaufort Harbor.**

76-25 to 76-34. [Repealed.]

Article 3.**Bogue Inlet.**

76-35, 76-36. [Repealed.]

Article 4.**Hatteras and Ocracoke.**

Sec.

76-37 to 76-39. [Repealed.]

Article 6.**Morehead City Navigation and Pilotage Commission.**

76-59. Board of commissioners of navigation and pilotage.

ARTICLE 1.***Cape Fear River.***

§ 76-1. Board of commissioners of navigation and pilotage. — A board of commissioners of navigation and pilotage for the Cape Fear River and Bar, to consist of five members, at least four of whom shall be residents of New Hanover County, and none of whom shall be licensed pilots, is hereby created. The members of the board shall be appointed by the Governor and their terms of office shall begin on the fifteenth day of April of the year in which they are appointed and continue for four years and until their successors shall be appointed and qualified. They shall be and are hereby declared to be commissioners for a special purpose, within the purview of Sec. 7, Article XIV, of the Constitution of North Carolina. It shall be the duty of the Governor to appoint, on or before the fifth day of April, 1921, and on or before the fifth day of April of every fourth year thereafter, the members of said board of commissioners. A majority of the board shall constitute a quorum and may act in all cases. The board shall have power to fill vacancies in its membership as they occur during their term, to appoint a clerk to record in a book, rules, orders and proceedings of the board, and the board shall have authority in all matters that may concern the navigation of waters from seven miles above Negrohead Point downwards, and out of the bar and inlets. (1921, c. 79, s. 1; C. S., s. 6943(a); 1975, c. 23, s. 2.)

Cross Reference. — As to transfer of the board of commissioners of navigation and pilotage for the Cape Fear River to the Department of Transportation, see § 143B-351.

Editor's Note. —

The 1975 amendment, effective May 5, 1975, deleted the former last sentence of the section,

which provided for the appointment of a harbor master for the port of Wilmington.

Session Laws 1975, c. 23, s. 1, provides: "The position and office of harbor master for the port of Wilmington is hereby abolished."

§ 76-14. Rates of pilotage. — (a) Pilotage charges for vessels, inbound or outbound, shall be based upon the gross tonnage and draft of each vessel in the following general classifications:

- (1) Less than 2,000 gross tons \$12.00 per draft ft.
(one way)

- (2) 2,000 gross tons or more but less than
11,000 \$13.50 per draft ft.
(one way)
- (3) 11,000 gross tons or more but less than
20,000 \$15.00 per draft ft.
(one way)
- (4) 20,000 gross tons or more but less than
29,000 \$16.50 per draft ft.
(one way)
- (5) 29,000 gross tons or more \$18.00 per draft ft.
(one way)

(b) The charge for a fraction of a draft foot shall be computed from the next half-foot.

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

(d) The measurement described herein shall be in United States feet and inches and registered gross tons and shall be furnished to the pilot by the master of the vessel or her agent for the purposes of computing pilotage fees.

(e) The charge for towing vessels with a tow shall be the total gross tonnage of all vessels in the tow and the draft will be that of the deepest vessel. 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 charge for each vessel.

(f) The board of commissioners of navigation and pilotage for the Cape Fear River and Bar shall be the sole arbitrators of any question arising concerning any pilotage charges.

(g) Pilotage charges for shifting of vessels shall be as follows:

- (1) Less than five miles \$ 50.00
(2) Five miles or more but less than 10 \$ 75.00
(3) Ten miles or more but less than 15 \$100.00
(4) Fifteen miles and over \$125.00

A vessel shifting "dead" (without power) will be charged double the regular shifting fee.

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

(i) All vessels calling at any Cape Fear River port which require pilotage will pay full pilotage charges regardless of the reason for the 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; 1975, c. 198.)

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

§ 76-18: Repealed by Session Laws 1975, c. 23, s. 3, effective May 5, 1975.

Editor's Note. — Session Laws 1975, c. 23, s. 1, effective May 5, 1975, provides: "The position and office of harbor master for the port of Wilmington is hereby abolished."

ARTICLE 2.

Beaufort Harbor.

§§ 76-25 to 76-34: Repealed by Session Laws 1975, c. 716, s. 4, effective July 1, 1975.

ARTICLE 3.

Bogue Inlet.

§§ 76-35, 76-36: Repealed by Session Laws 1975, c. 716, s. 4, effective July 1, 1975.

ARTICLE 4.

Hatteras and Ocracoke.

§§ 76-37 to 76-39: Repealed by Session Laws 1975, c. 716, s. 4, effective July 1, 1975.

ARTICLE 6.

Morehead City Navigation and Pilotage Commission.

§ 76-59. **Board of commissioners of navigation and pilotage.** — A board of commissioners of navigation and pilotage for Old Topsail Inlet and Beaufort Bar to consist of three members, none of whom shall be licensed pilots, is hereby created. The members of the board shall be appointed by the Morehead City port commission, and their terms of office shall begin on the fifteenth day of July of the year in which they are appointed and continue for four years and until their successors shall be appointed and qualified. They shall be and are hereby declared to be commissioners for a special purpose, within the purview of Sec. 7, Article XIV of the Constitution of North Carolina. It shall be the duty of the Morehead City port commission to appoint on or before the first day of July, 1947, and on or before the first day of July every fourth year thereafter, the members of said board of commissioners. A majority of the board shall constitute a quorum and may act in all cases. The board shall have power to fill vacancies in its membership as they occur during their term, to appoint a clerk to record in a book, rules, orders and proceedings of the board, and the board shall have authority in all matters that may concern the navigation of waters from the Beaufort Sea Buoy to Morehead City, and out of the bar and inlet including Beaufort Harbor. (1947, c. 748; 1975, c. 716, s. 4.)

Cross Reference. — As to transfer of the board of commissioners of navigation and pilotage for Old Topsail Inlet and Beaufort Bar to the Department of Transportation, see § 143B-351.

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added "including Beaufort Harbor" at the end of the section.

Chapter 77.

Rivers and Creeks.

Article 2.

Obstructions in Streams.

Sec.

77-14. Obstructions in streams and drainage ditches.

Sec.

77-13. Obstructing streams a misdemeanor.

ARTICLE 2.

Obstructions in Streams.

§ 77-13. **Obstructing streams a misdemeanor.** — If any person shall willfully fell any tree, or willfully put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, and whereby the navigation of such stream by any raft or flat may be impeded, delayed, or prevented, the person so offending shall be guilty of a misdemeanor, and fined not to exceed fifty dollars (\$50.00), or imprisoned not to exceed 30 days. Nothing in this section shall prevent the erection of fish dams or hedges which do not extend across more than two thirds of the width of any stream where erected, but if extending over more than two thirds of the width of any stream, the said penalties shall attach. This section may be enforced by specially commissioned forest law-enforcement officers of the Department of Natural and Economic Resources. (1872-3, c. 107, ss. 1, 2; Code, s. 1123; Rev., s. 3559; C. S., s. 7377; 1975, c. 509.)

Editor's Note. — The 1975 amendment added the third sentence.

§ 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. This section may be enforced by specially commissioned forest law-enforcement officers of the Department of Natural and Economic Resources. (1953, c. 1242; 1957, c. 524; 1959, cc. 160, 1125; 1961, c. 507; 1969, c. 790, s. 1; 1975, c. 509.)

Editor's Note. —

The 1975 amendment added the second sentence.

Chapter 78A.**North Carolina Securities Act.****Article 3.****Exemptions.**

Sec.

78A-18. Denial and revocation of exemptions.

Article 4.**Registration of Securities.**

78A-25. Registration by notification.

78A-27. Registration by qualification.

Article 5.**Registration of Dealers and Salesmen.**

78A-36. Registration requirement.

Article 7.**Civil Liability and Criminal Penalties.**

Sec.

78A-56. Civil liabilities.

Article 8.**Miscellaneous Provisions.**

78A-63. Scope of the Chapter; service of process.

ARTICLE 3.*Exemptions.***§ 78A-18. Denial and revocation of exemptions.**

(b) In any proceeding under this Chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. (1925, c. 190, ss. 5, 11; 1927, c. 149, ss. 5, 11; 1973, c. 1380; 1975, c. 19, s. 20.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "proving" for "providing" in subsection (b).

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

ARTICLE 4.*Registration of Securities.***§ 78A-25. Registration by notification.**

(c) If no stop order is in effect and no proceeding is pending under G.S. 78A-29, a registration statement under this section automatically becomes effective at three o'clock Raleigh, North Carolina time in the afternoon of the tenth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Administrator determines. (1927, c. 149, s. 8; 1955, c. 436, s. 6; 1973, c. 1380; 1975, c. 144, s. 1.)

Editor's Note. — The 1975 amendment substituted "Raleigh, North Carolina time" for "Eastern Standard Time" in subsection (c).

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

§ 78A-27. Registration by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in G.S. 78A-28(c) and the consent to service of process required by G.S. 78A-63(f):

- (1) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and

a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

- (2) With respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;
- (3) With respect to persons covered by subdivision (2): the remuneration paid during the past 12 months or fiscal year and estimated to be paid during the next fiscal year, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;
- (4) With respect to any person owning of record or beneficially if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (2) other than his occupation;
- (5) With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;
- (6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;
- (7) The capitalization and long-term debt (on both current and a pro forma basis) of the issuer and any significant subsidiary including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past three years or is obligated to issue any of its securities;
- (8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such

agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

- (9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amount of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);
- (10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (2), (4), (5), (6), or (8) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;
- (11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);
- (12) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;
- (13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
- (14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;
- (15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;
- (16) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the

purchase of any business, the same financial statements which would be required if that business were the registrant; and

- (17) Such additional information as the Administrator requires by rule or order.

(1975, c. 19, s. 21.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "or" for "of" preceding "any significant subsidiary" in subdivision (6) of subsection (b).

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

ARTICLE 5.

Registration of Dealers and Salesmen.

§ 78A-36. Registration requirement.

(b) It is unlawful for any dealer or issuer to employ a salesman unless the salesman is registered. The registration of a salesman is not effective during any period when he is not associated with a particular dealer registered under this Chapter or a particular issuer. When a salesman begins or terminates those activities which make him a salesman, the salesman as well as the dealer or issuer shall promptly notify the Administrator.

The Administrator may by rule or order require the return of a salesman's license upon the termination of those activities which make him a salesman or, if such return is impossible, require a bond or evidence satisfactory to the Administrator of such impossibility.

(1975, c. 144, s. 2.)

Editor's Note. — The 1975 amendment inserted "a bond or" near the end of the second paragraph of subsection (b).

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

ARTICLE 7.

Civil Liability and Criminal Penalties.

§ 78A-56. Civil liabilities.

(b) Any person who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the seller not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security.

(j) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or G.S. 78A-37(d). (1925, c. 190, s. 23; 1927, c. 149, s. 23; 1955, c. 436, s. 10; 1971, c. 572, s. 2; 1973, c. 1380; 1975, c. 19, s. 22; c. 144, s. 3.)

Editor's Note. — The first 1975 amendment corrected an error in the 1973 act by substituting "G.S. 78A-37(d)" for "G.S. 78A-37(e)" at the end of subsection (j).

The second 1975 amendment inserted "(the seller not knowing of the untruth or omission), and who does not sustain the burden of proof

that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission" near the middle of the first sentence of subsection (b).

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

ARTICLE 8.

Miscellaneous Provisions.

§ 78A-63. Scope of the Chapter; service of process.

(b) Sections 78A-8, 78A-10, 78A-36(a) and 78A-56(b) apply to persons who buy or offer to buy when (i) an offer to buy is made in this State, or (ii) an offer to sell is made and accepted in this State.

(1975, c. 144, s. 4.)

Editor's Note. — The 1975 amendment inserted the reference to § 78A-56(b) in subsection (b).

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

Chapter 80.

Trademarks, Brands, etc.

Article 7.

Recording of Cattle Brands and
Marks with Commissioner
of Agriculture.

Sec.

80-46 to 80-56. [Repealed.]

Article 8.

Registration and Protection
of Livestock Brands.

80-57. Purpose.

80-58. Definitions.

Sec.

80-59. Responsibility and authority of
Commissioner of Agriculture;
application for registration; transfer
of ownership of brand.

80-60. No brands duplicated.

80-61. Rules and regulations.

80-62. Fees for recording.

80-63. Records to be kept of sales and slaughter.

80-64. Defacing of brands prohibited.

80-65. Rerecording.

80-66. Violation a misdemeanor.

ARTICLE 7.

*Recording of Cattle Brands and Marks with
Commissioner of Agriculture.*

§§ 80-46 to 80-56: Repealed by Session Laws 1975, c. 261, s. 1, effective January 1, 1976.

ARTICLE 8.

Registration and Protection of Livestock Brands.

§ 80-57. **Purpose.** — The purpose of this Article is to discourage livestock theft by allowing for the voluntary individual registration of brand marks for certain livestock. (1975, c. 261, s. 1.)

Editor's Note. — The act inserting this Article repealed Article 7, entitled "Recording of Cattle Brands and Marks with Commissioner of Agriculture." Where former provisions were similar to the new provisions, the historical citations to the repealed sections have been added to the new sections.

Session Laws 1975, c. 261, s. 2, provides: "This act shall become effective on January 1, 1976, except G.S. 80-61, which shall become effective upon ratification." The act was ratified May 12, 1975.

§ 80-58. **Definitions.** — (1) "Board". — The term "Board" means the North Carolina Board of Agriculture.

(2) "Brand". — The term "brand" means an identification mark permanently affixed into the hide of livestock by a hot iron or an extremely cold brand known as a "freeze brand."

(3) "Commissioner". — The term "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(4) "Livestock". — The term "livestock" means cattle, horses, ponies, mules, and asses.

(5) "Person". — The term "person" means an individual, firm, company, association, partnership or corporation. (1935, c. 232, s. 1; 1975, c. 261, s. 1.)

§ 80-59. **Responsibility and authority of Commissioner of Agriculture; application for registration; transfer of ownership of brand.** — The Commissioner shall record livestock brands and maintain a record of such brands

pursuant to this Article. Such records shall be public and shall be prima facie evidence of ownership of livestock which is properly branded under this Article. The Commissioner shall authorize such agents within the North Carolina Department of Agriculture as he deems necessary to implement this Article.

Any person desiring the exclusive use of a brand shall make application to the Commissioner on forms prescribed by the Board. The transfer of ownership of a brand registration may be done only at the written request of the brand registrant of record. The Commissioner shall receive a fee of ten dollars (\$10.00) for recording such transfer. (1935, c. 232, ss. 3-5; 1975, c. 261, s. 1.)

§ 80-60. No brands duplicated. — No brand shall be registered that is a reasonable facsimile of another registered brand or that will likely be confused with another brand registered under this Article. (1975, c. 261, s. 1.)

§ 80-61. Rules and regulations. — The Board shall have authority to promulgate reasonable rules and regulations for implementation of this Article which shall include, but not be limited to, the location of and the size of brand marks. (1975, c. 261, s. 1.)

Editor's Note. — Session Laws 1975, c. 261, s. 2, provides: "This act shall become effective on January 1, 1976, except G.S. 80-61, which

shall become effective upon ratification." The act was ratified May 12, 1975.

§ 80-62. Fees for recording. — The Commissioner is authorized to collect a fee of twenty-five dollars (\$25.00) for the recording of each new brand, or for rerecording of each brand, and shall issue one certified copy of each brand recording to the holder of said brand. Duplicate certificates of registration may be issued by the Commissioner upon payment of a fee of two dollars (\$2.00). Revenues collected pursuant to this Article shall be deposited with the State Treasurer to the account of the North Carolina Department of Agriculture. (1935, c. 232, ss. 5, 6; 1975, c. 261, s. 1.)

§ 80-63. Records to be kept of sales and slaughter. — Persons or agents selling or bartering or exchanging branded livestock in the State of North Carolina shall provide the purchaser or new owner with a bill of sale showing a reasonable facsimile of the brand on any and all livestock having a brand as defined in this Article. Such bills of sale shall be prima facie evidence of transfer of ownership of branded livestock. Slaughter facilities in the State of North Carolina shall affix to their normal records of receipt of livestock a reasonable facsimile of the brand on any branded livestock received by them. Such records shall be maintained for at least 12 months. (1935, c. 232, ss. 8, 9; 1975, c. 261, s. 1.)

§ 80-64. Defacing of brands prohibited. — No person may change, conceal, deface, disfigure or obliterate any brand previously branded, impressed, or marked on any livestock, or put his or any other brand upon or over any part of any brand previously branded or marked upon any livestock, and no person shall make or use any counterfeit of any brand of any other person. (1935, c. 232, s. 10; 1975, c. 261, s. 1.)

§ 80-65. Rerecording. — Every brand recorded under this Article, in order to remain effective, must be rerecorded with the Commissioner during the tenth year from its next previous recordation. Each person having a brand registered in the State of North Carolina shall be notified in writing by the Commissioner that said brand must be rerecorded to prohibit its disenrollment from the record of such brand maintained by the Commissioner. (1975, c. 261, s. 1.)

§ 80-66. Violation a misdemeanor. — Any person who violates any provision of this Article or any rule or regulation of the Board promulgated hereunder shall be guilty of a misdemeanor and upon conviction thereof fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than 60 days, or both fined and imprisoned, in the discretion of the court. (1935, c. 232, s. 11; 1975, c. 261, s. 1.)

§ 80-66.1. Purpose and scope of this article.

§ 80-66.2. Definitions of terms used in this article.

§ 80-66.3. Board of Agriculture authorized to establish standards of weights and measures for commodities having same.

§ 80-66.4. Employment of Director of Weights and Measures and authorized agents.

§ 80-66.5. Duties and powers.

§ 80-66.6. Local inspection of weights and measures.

§ 80-66.7. Standards of weights and measures.

§ 80-66.8. Penalties.

§ 80-66.9 to § 80-66.12. (Reserved)

Article 2.

Powers and Duties of Commissioners.

§ 80-67. General duties.

§ 80-68. Subcommittees.

§ 80-69 to § 80-72. (Reserved)

Article 3.

Violations.

§ 80-73. Misrepresentation of quality.

§ 80-74. Misrepresentation of price.

§ 80-75. Containers to be sold by weight.

§ 80-76. Containers for packages to which penalties apply.

§ 80-77. Sale from bulk.

§ 80-78. Information required on packages.

§ 80-79. Enforcement of weight prior on retail packages.

§ 80-80. Offense and penalty.

§ 80-81. In effect.

§ 80-82. Penalties, penalties.

§ 80-83 to § 80-86. (Reserved)

Article 4.

Uniform Weights and Measures.

§ 80-87. Standard weight packages of flour, meal, grain and honey.

§ 80-88. Sale of grain in bulk, other articles and other contents necessary with.

§ 80-89. Approval of loading units, etc. for retail sale.

§ 80-90. Sale of such units and charges by weight.

§ 80-91. Enforcement of standard by use of "test" method.

§ 80-92. Standard weights and measures.

§ 80-93. Standardized measurements of bulk.

§ 80-66.1. Purpose and scope of this article.

§ 80-66.2. Definitions of terms used in this article.

§ 80-66.3. Board of Agriculture authorized to establish standards of weights and measures for commodities having same.

§ 80-66.4. Employment of Director of Weights and Measures and authorized agents.

§ 80-66.5. Duties and powers.

§ 80-66.6. Local inspection of weights and measures.

§ 80-66.7. Standards of weights and measures.

§ 80-66.8. Penalties.

§ 80-66.9 to § 80-66.12. (Reserved)

Article 2.

Powers and Duties of Commissioners.

§ 80-67. General duties.

§ 80-68. Subcommittees.

§ 80-69 to § 80-72. (Reserved)

Article 3.

§ 80-73. Misrepresentation of quality.

§ 80-74. Misrepresentation of price.

§ 80-75. Containers to be sold by weight.

§ 80-76. Containers for packages to which penalties apply.

§ 80-77. Sale from bulk.

§ 80-78. Information required on packages.

§ 80-79. Enforcement of weight prior on retail packages.

§ 80-80. Offense and penalty.

§ 80-81. In effect.

§ 80-82. Penalties, penalties.

§ 80-83 to § 80-86. (Reserved)

Article 4.

Uniform Weights and Measures.

§ 80-87. Standard weight packages of flour, meal, grain and honey.

§ 80-88. Sale of grain in bulk, other articles and other contents necessary with.

§ 80-89. Approval of loading units, etc. for retail sale.

§ 80-90. Sale of such units and charges by weight.

§ 80-91. Enforcement of standard by use of "test" method.

§ 80-92. Standard weights and measures.

§ 80-93. Standardized measurements of bulk.

Chapter 81.**Weights and Measures.**

§§ 81-1 to 81-82: Recodified as §§ 81A-1 to 81A-88, effective July 1, 1976.

Editor's Note. — This Chapter was rewritten by Session Laws 1975, c. 544, effective July 1, 1976, and has been recodified as Chapter 81A.

Chapter 81A.

Weights and Measures Act of 1975.

Article 1.

Administration of Chapter.

Sec.

81A-1. Weights and measures program provided for.

81A-2. Administration of these Articles.

81A-3. Systems of weights and measures.

81A-4. Board of Agriculture authorized to establish standards of weights and measures for commodities having none.

81A-5. Employment of Director of Weights and Measures and authorized agents.

81A-6. Salaries and expenses.

81A-7. Local inspection of weights and measures.

81A-8. Standards of weights and measures.

81A-9. Definitions.

81A-10 to 81A-14. [Reserved.]

Article 2.

Powers and Duties of Commissioner.

81A-15. General duties.

81A-16. Police powers.

81A-17 to 81A-21. [Reserved.]

Article 3.

Violations.

81A-22. Misrepresentation of quantity.

81A-23. Misrepresentation of pricing.

81A-24. Commodities to be sold by weight, measure or numerical count.

81A-25. Unlawful for package to mislead purchaser.

81A-26. Sale from bulk.

81A-27. Information required on packages.

81A-28. Declarations of unit price on random packages.

81A-29. Offenses and penalties.

81A-30. Injunction.

81A-31. Presumptive evidence.

81A-32 to 81A-36. [Reserved.]

Article 4.

Uniform Weights and Measures.

81A-37. Standard weight packages of flour, meal, grits and hominy.

81A-38. Sale of cement blocks, cinder blocks and other concrete masonry units.

81A-39. Approval of heating units, etc., for curing tobacco.

81A-40. Sale of coal, coke and charcoal by weight.

81A-41. Establishment of standard loaves of bread; "loaf" defined.

81A-42. Standard weights and measures.

81A-43. Standard rule for measurement of logs.

Sec.

81A-44. Authority to prescribe standards of weight or measurement for sale of milk or milk products.

81A-45 to 81A-49. [Reserved.]

Article 5.

Public Weighmasters.

81A-50. Weighing livestock sold at public livestock market; weight certificates.

81A-51. Public weighmaster defined; to be licensed.

81A-52. Application for license permit.

81A-53. Forms of certificates of weight, etc., to be approved by Commissioner or authorized agent.

81A-54. Official seal of public weighmaster.

81A-55. Violations of provisions by weighmasters made misdemeanor.

81A-56. Requesting weighmaster to falsify weights; impersonation of weighmaster; alteration of certificate, etc.

81A-57. Certificate of weighmasters presumed accurate and correct.

81A-58. Duty of custodian of product during time intervening between weighing and issuance of certificate.

81A-59. Weighing tobacco in sales warehouses.

81A-60. Complaints to weighmaster or Commissioner of Agriculture.

81A-61. Approval of devices used.

81A-62. Annual license for public weighmaster.

81A-63. Seal declared property of State.

81A-64. Cotton weighing.

81A-65 to 81A-69. [Reserved.]

Article 6.

Scale Technician.

81A-70. Purpose of Article.

81A-71. Prerequisites for scale technician.

81A-72. Registration; certificate of registration; annual renewal.

81A-73. Service certificate.

81A-74. Bond.

81A-75. Scale removal.

81A-76. Control of condemned or rejected scale.

81A-77. Secondhand scale.

81A-78. Scale location.

81A-79. Exemption.

81A-80. Penalty.

81A-81 to 81A-85. [Reserved.]

Article 7.**General Provisions.**

Sec.

81A-86. Regulations to be unaffected by repeal of prior enabling statute.

Sec.

81A-87. Severability provision.

81A-88. Repeal of conflicting laws.

Editor's Note. — This Chapter is Chapter 81 as rewritten by Session Laws 1975, c. 544, effective July 1, 1976, and recodified. Where

appropriate, historical citations to the sections of the former Chapter have been added to corresponding sections of the new Chapter.

ARTICLE 1.***Administration of Chapter.***

§ 81A-1. Weights and measures program provided for. — In order to protect the purchasers or sellers of any commodity, and to provide uniform standards of weight and uniform standards of measure throughout the State, which must be in conformity with the standards of weight and the standards of measure established by Congress, the Commissioner is hereby authorized to establish and maintain a weights and measures program as is hereinafter provided. (1927, c. 261, s. 1; 1945, c. 280, s. 1; 1975, c. 544.)

§ 81A-2. Administration of these Articles. — The provisions of this Chapter shall be administered by the Commissioner or his authorized agent. For the purpose of administering and giving effect to the provisions of this Chapter, the provisions of Handbook 44 as adopted by the National Conference on Weights and Measures, are hereby adopted except insofar as modified or rejected by the North Carolina Board of Agriculture. The North Carolina Board of Agriculture is empowered to make such further rules and regulations as may be necessary to make effective the purposes and provisions of this Chapter. All fees or moneys received by the Commissioner pursuant to this Chapter shall be placed in the Department of Agriculture fund for the purpose of enforcing this Chapter. (1927, c. 261, s. 2; 1931, c. 150; 1943, c. 762, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-3. Systems of weights and measures. — The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the State. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in the State. (1975, c. 544.)

§ 81A-4. Board of Agriculture authorized to establish standards of weights and measures for commodities having none. — The Board of Agriculture is authorized and directed and empowered to establish standards of weights and measures for any commodity if no standard has been established by Congress or by the laws of the State of North Carolina; provided, however, that when a standard is established by Congress, or by the laws of the State of North Carolina, such standard shall supersede the standard or standards established by the Board of Agriculture. (1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-5. Employment of Director of Weights and Measures and authorized agents. — The Commissioner may employ a Director of Weights and Measures and such other employees as may be necessary in carrying out the provisions of this Chapter and he may fix and regulate their duties. All authority vested in the commissioner by virtue of the provisions of this Chapter may with like force and effect, be executed by such authorized agents of the Commissioner as defined in this Chapter. (1927, c. 261, ss. 3, 4; 1949, c. 984; 1975, c. 544.)

§ 81A-6. Salaries and expenses. — The Commissioner shall request sufficient funds for the proper administration of the duties prescribed in this Chapter. (1927, c. 261, s. 5; 1931, c. 150; 1949, c. 984; 1975, c. 544.)

§ 81A-7. Local inspection of weights and measures. — When any city or county appoints a local inspector of weights and measures, the appointment and regulation of his work must be pursuant to the rules and regulations of the Department of Agriculture and his work shall be subject to the supervision of the Commissioner or his authorized agent. (1927, c. 261, s. 6; 1949, c. 984; 1975, c. 544.)

§ 81A-8. Standards of weights and measures. — Weights and measures that are traceable to the U.S. Prototype Standards supplied by the United States, or approved as being satisfactory by the National Bureau of Standards, shall be the State primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Bureau of Standards. All secondary standards may be prescribed by the Commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the Commissioner or his authorized agent. Complete record of the standards belonging to the State shall be maintained by the Commissioner. (1927, c. 261, s. 9; 1943, c. 543; 1949, c. 984; 1975, c. 544.)

§ 81A-9. Definitions. — The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) Adjustment. — “Adjustment” is an act involving the tightening or loosening, or lengthening or shortening, or movement, of any part of a scale or weighing device, or the coordination of mechanical action of parts or electronic components with or upon each other, so as to make the scale or weighing device give correct indications of applied weight values within legal tolerance, and the correctness of indications shall be determined by test provided for under definition of the term “service” as defined in this Chapter.
- (2) Authorized Agent. — An “authorized agent” is any employee of the North Carolina Department of Agriculture designated by the Commissioner to enforce any provisions of this Chapter and who is designated by an official identification card issued by the Commissioner.
- (3) Barrel. — The term “barrel,” when used in connection with beer, ale, porter, and other similar fermented liquor is a unit of 31 liquid gallons; fractional parts of a barrel shall be understood to mean like fractional parts of 31 gallons.
- (4) Bulk Sale. — The term “bulk sale” is the sale of commodities when the quantity is determined at the time of sale.
- (5) Bushel. — The term “bushel” when used in connection with dry measure and standard containers is a unit of 2150.42 cubic inches, of which the dry quart and dry pint, respectively, are the one-thirty-second and one-sixty-fourth parts.
- (6) Commissioner of Agriculture. — “Commissioner” is the Commissioner of Agriculture of the State of North Carolina.

- (7) **Condemned Equipment.** — “Condemned equipment” is equipment that is permanently out of service.
- (8) **Cord.** — “Cord” when used in connection with purchases of wood is a quantity of wood consisting of any number of sticks, bolts or pieces laid parallel and together so as to form a rick or stack occupying a space four feet wide, four feet high and eight feet long, or such other dimensions that will when multiplied together equal 128 cubic feet by volume, construed as being seventy percent (70%) solid and thirty percent (30%) air space or 90 solid cubic feet.
- (9) **Correct.** — “Correct” is conformance to all applicable requirements of this Chapter.
- (10) **Flour.** — “Flour” is any finely ground product of wheat, or other grain, corn, peas, beans, seed or other substance, with or without added ingredients, intended for use as food for man.
- (11) **Gallon.** — “Gallon” when used in connection with liquid measure is a unit of 231 cubic inches, of which the liquid quart, liquid pint and gill are, respectively, the quarter, the one-eighth and the one-thirty-second parts.
- (12) **Installation.** — “Installation” is an act involving the erection, or building, or assembling of parts, or the placing or setting up of a scale or weighing device so as to give correct indications of applied weight values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under definition of the term “service” as defined in this Chapter.
- (13) **Maintenance.** — “Maintenance” is an act pursuant to the retention of a scale or weighing device in such working condition as to give correct applied weight value indications within legal tolerance when used as intended, which may involve either or both adjustment or repair before or after inaccuracy develops in fact, and the correctness of indications shall be determined by test provided for under the term “service” as defined in this Chapter.
- (14) **Meal.** — “Meal” is any product of grain, corn, peas, beans, seed or other substance coarsely ground, with or without added ingredients, either bolted, or unbolted, including grits and hominy, intended for use as food for man.
- (15) **Package.** — “Package” is any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.
- (16) **Person.** — “Person” is both plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, firms, societies, and associations.
- (17) **Pound.** — “Pound,” used in connection with weight is the avoirdupois pound as declared by act of the United States Congress, except in those cases where it is common practice to use the “troy” pound or “apothecaries” pound, and the “ounce” is one-sixteenth part of an avoirdupois pound.
- (18) **Primary Standards.** — “Primary standards” are the physical standards of the State which serve as the legal reference from which all other standards, weights and measures are derived.
- (19) **Rejected Equipment.** — “Rejected equipment” is equipment that is incorrect, which is considered susceptible of proper repair.
- (20) **Repair.** — “Repair” is an act involving the replacement or mending of a broken or nonadjustable part or parts and the restoration of a scale or weighing device to such working condition as to give correct indications of applied weight values within legal tolerance when used for the purpose intended, and the correctness of indications shall be

determined by test provided for under the term "service" as defined in this Chapter.

- (21) Sale or Sell. — "Sale" or "sell" is the ordinary meaning of said words and includes barter and exchange.
- (22) Scale Technician. — A "scale technician" is any person who, for hire or award, renders service involving adjustment, installation, repair, or maintenance of a scale or weighing device, either used or intended to be used in determining weight value, or values, by either physical act, instruction, or supervision.
- (23) Secondary Standards. — "Secondary standards" are the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.
- (24) Service. — "Service" is activity involving adjustment, installation, repair, or maintenance or a combination of two or more of these activities with respect to a scale or weighing device, and, in addition thereto, a test for determination of the accuracy of weight value indication in the following manner: Applying a series of loads of standard weight on a platter or platform up to capacity on a scale of 30 pounds capacity, and on all other scales except vehicle scales, standard weight loads equal to the first dial and/or unit weight on dial scales, and on beam scales and digital instruments a standard weight load equal to three-fourths scale capacity shall be applied. On vehicle scales up to and including 10 tons a minimum of 5,000 pounds of standard weight load and 5,000 pounds of build-up load equally distributed. On vehicle scales with a rated capacity in excess of 10 tons a standard weight load (build-up load if standard weights are not available) of not less than 20,000 pounds. If scale is so equipped all tare mechanisms shall be included in test.
- (25) Ton. — "Ton" is a unit of 2,000 pounds, avoirdupois weight.
- (26) Weight. — "Weight" when used in connection with any commodity is net weight; provided, however, where the label declares that the product is sold by drained weight, weight means net drained weight.
- (27) Weight(s) and (or) Measure(s). — "Weight(s) and (or) measure(s)" are all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices. (1927, c. 261, ss. 20, 21; 1941, c. 237, s. 2; 1945, c. 280, s. 1; 1947, c. 380; 1975, c. 544.)

§§ 81A-10 to 81A-14: Reserved for future codification purposes.

ARTICLE 2.

Powers and Duties of Commissioner.

§ 81A-15. **General duties.** — The Commissioner shall:

- (1) Have and keep general supervision of commercial weighing and measuring devices offered for sale, sold or used in the State.
- (2) Upon written request from any person or educational institution in the State test or cause to be tested, or calibrate, weights, measures and weighing and measuring devices used as standards in the State.
- (3) Enforce all the provisions of this Chapter.
- (4) Conduct investigations to insure compliance with this Chapter.
- (5) Inspect and test weights and measures kept, offered, or exposed for sale.
- (6) Inspect, and test to ascertain if they are correct, weights and measures commercially used (i) in determining the weight, measure, or count of

commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count or (ii) in computing the basic charge or payment for services rendered on the basis of weight, measure or count.

- (7) Approve for use, and may mark, such weights and measures and weighing and measuring devices as he finds to be correct, and shall reject and mark as rejected such weights and measures as he finds incorrect. Weights and measures and weighing and measuring devices that have been rejected may be seized if not corrected within 10 days, or if used or disposed of in a manner not specifically authorized. Weights and measures found to be incorrect that are not capable of being made correct shall be condemned and may be seized by the Commissioner without any court order or other legal process.
- (8) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this Chapter or regulations promulgated pursuant thereto. In carrying out the provisions of this section, recognized sampling procedures, such as are designated in National Bureau of Standards Handbook 67, "Checking Prepackaged Commodities," shall be used.
- (9) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce.
- (10) Delegate to authorized agents any of these responsibilities for the proper administration of this Chapter. (1927, c. 261, s. 10; 1949, c. 984; 1975, c. 544.)

§ 81A-16. Police powers. — When necessary for the enforcement of this Chapter or regulations promulgated pursuant thereto the Commissioner or his authorized agent is:

- (1) Authorized to enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained.
- (2) Empowered to issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale.
- (3) Empowered to seize, for use as evidence, without warrant or other legal writ, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this Chapter or regulations promulgated pursuant thereto.
- (4) Empowered to stop any commercial vehicle wherever found in the State and, after presentment of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him to proceed with the vehicle to some specified place for inspection.
- (5) Authorized to arrest, without warrant, any violator of this Chapter. Such authorized agent shall proceed forthwith with such person before a magistrate or other person authorized to issue arrest warrants. (1927, c. 261, ss. 11-13; 1975, c. 544.)

§§ 81A-17 to 81A-21: Reserved for future codification purposes.

ARTICLE 3.

Violations.

§ 81A-22. **Misrepresentation of quantity.** — No person shall sell, offer or expose for sale less than the quantity he represents. No buyer shall take more than the quantity he represents when he furnishes the weight or measure by means of which the quantity of any commodity, thing or service is determined. (1927, c. 261, s. 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-23. **Misrepresentation of pricing.** — No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person. (1975, c. 544.)

§ 81A-24. **Commodities to be sold by weight, measure or numerical count.** — It shall be unlawful to sell, except for immediate consumption by the purchaser, on the premises of the seller, liquid commodities in any other manner than by weight or liquid measure, or commodities not liquid in any other manner than by measure of time, by length, by volume, by weight or by numerical count. When a commodity is sold by numerical count in excess of one unit, the units which constitute said numerical count shall be uniform in size and/or weight, and be so exposed as to be readily observed by the purchaser. (1945, c. 280, s. 1; 1949, c. 973; 1975, c. 544.)

§ 81A-25. **Unlawful for package to mislead purchaser.** — It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity in package form when said package is so made, or formed, or filled, or wrapped, or exposed, or marked, or labeled as to mislead or deceive the purchaser as to the quantity of its contents. (1945, c. 280, s. 1; 1975, c. 544.)

§ 81A-26. **Sale from bulk.** — Whenever the quantity is determined by the seller, bulk sales in excess of twenty dollars (\$20.00) and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

- (1) The name and address of the vendor and purchaser,
- (2) The date delivered,
- (3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity,
- (4) The identity of the most descriptive terms commercially practicable, including any quality representation made in connection with the sale, and
- (5) The count of individually wrapped packages, if more than one. (1975, c. 544.)

§ 81A-27. **Information required on packages.** — Except as otherwise provided in this Chapter or by regulations promulgated pursuant thereto, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container,
- (2) The quantity of contents in terms of weight, measure, or count, and
- (3) The name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed. (1927, c. 261, s. 16; 1945, c. 280, s. 1; 1975, c. 544.)

§ 81A-28. Declarations of unit price on random packages. — In addition to the declarations required by G.S. 81A-27, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight at the time it is offered for retail sale. (1975, c. 544.)

§ 81A-29. Offenses and penalties. — Any person who violates any provision of this section or any provision of this Chapter or regulations promulgated pursuant thereto for which a specific penalty has not been prescribed shall be guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00), or by imprisonment for not more than three months, or both. Upon a subsequent conviction thereof, said person shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000) or by imprisonment for up to one year, or both. No person shall:

- (1) Use or have in possession for use in commerce any incorrect weight or measure.
- (2) Remove any tag, seal, or mark from any weight or measure without specific written authorization from the Commissioner or his authorized agent.
- (3) Hinder or obstruct any weights-and-measures official in the performance of his duties.
- (4) Impersonate in any way any employee of the North Carolina Department of Agriculture designated by the Commissioner to enforce any part of this Chapter.
- (5) Use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned so that its indications may be accurately read and the weighing or measuring operation observed from some position which may be reasonably assumed by a customer. (1927, c. 261, ss. 14, 15, 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-30. Injunction. — The Commissioner or his authorized agent is authorized to apply to any court of competent jurisdiction for a temporary restraining order or a preliminary or permanent injunction restraining any person from violating any provision of this Chapter. (1975, c. 544.)

§ 81A-31. Presumptive evidence. — Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place. (1975, c. 544.)

§§ 81A-32 to 81A-36: Reserved for future codification purposes.

ARTICLE 4.

Uniform Weights and Measures.

§ 81A-37. Standard weight packages of flour, meal, grits and hominy. — All flour and meal packed for sale, offered or exposed for sale, or sold in this State shall be one of the following standard weight packages and no other, namely: five pounds, 10 pounds, 25 pounds, 50 pounds, 100 pounds, and multiples of 100 pounds; provided, however, nonstandard-weight packages may be packed for sale, offered or exposed for sale, or sold in this State, weighing three pounds or less, if said nonstandard-weight packages shall be plainly and conspicuously marked showing net contents in avoirdupois weight; provided further that

nothing in this section shall be construed to prevent the retail sale of any amount of flour or meal direct to the consumer from bulk, upon order and weight at time of delivery to the consumer. (1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-38. Sale of cement blocks, cinder blocks and other concrete masonry units. — In order to protect the purchasers of concrete block, cinder block, and other concrete masonry units and to provide for a minimum load-bearing strength, all concrete block, cinder block, and other concrete masonry units offered for sale or sold in this State shall have a load-bearing strength of not less than 700 pounds per square inch of gross bearing area, or the minimum load-bearing strength approved by the National Underwriters Laboratory or by the American Society of Testing Materials, whichever is less. The manufacturer shall furnish proof, acceptable to the Board of Agriculture, that the concrete block, cinder block, or other concrete masonry units being offered for sale or sold comply with the minimum load-bearing strength required by this section. Each sale shall be accompanied with a bill of sale or invoice on which shall be printed or stamped in ink or other indelible substance a statement guaranteeing that the products covered by said bill of sale or invoice meet the minimum load-bearing strength as required by this section signed by a duly authorized official or agent of the manufacturer; provided, however, that the provisions of this section shall not prohibit the sale or offer for sale of cement block, cinder block, or other concrete masonry units, known as "seconds" or "rejects," due to size, shape or less than minimum load-bearing requirement, if and when said sale is accompanied with a bill of sale or invoice on which is printed or stamped in ink or other indelible substance in bold letters a statement that the cement block, cinder block, or other concrete masonry units so billed or invoiced are inferior in quality and do not comply with minimum load-bearing requirement signed by a duly authorized official or agent of the manufacturer. (1947, c. 788; 1975, c. 544.)

§ 81A-39. Approval of heating units, etc., for curing tobacco. — All heating units and/or curing assemblies offered for sale or sold in this State intended for use in curing the so-called flue-cured tobacco shall bear a label or seal of approval, authorized by the Board of Agriculture, and be accompanied with a statement, including drawings and instructions, signed by the manufacturer thereof, specifying how said heating unit shall be installed, operated, and/or used, so as to reduce to a minimum the fire hazard involved.

In order to obtain from the Board of Agriculture a label or seal of approval herein referred to, the manufacturer of the heating unit and/or curing assembly, hereinafter referred to as a "curer," shall first, and at his own expense, submit, set up and demonstrate a representative curer, so as to prove to the Commissioner or his authorized agent that said curer will, when installed and operated in accordance with drawings and instructions furnished by said manufacturer, in accordance with the rules and regulations adopted by the Board of Agriculture, reduce to a minimum the fire hazard involved; and second, shall obtain from the Department of Agriculture the label or seal of approval to be known as the "approval tag" and attach same to each curer which he (the manufacturer) offers for sale, sells, or installs either by himself or through his agent.

The Board of Agriculture is hereby authorized and empowered to make such rules and regulations as may be necessary to make effective the provisions of this section, and to make a charge for the approval tag not in excess of fifty cents (50¢) per curer. The said charge shall include the cost of issuing the tag of approval, and the cost of ascertaining by on-the-farm inspection whether or not the curers are being installed in accordance with the manufacturer's drawings and instructions, and/or the rules and regulations as adopted by the Board of Agriculture. In making and formulating its rules and regulations, the

Board of Agriculture will observe certain standards, such as the nature, type and technical construction of a tobacco curer referred to in this section, the type of fuel to be used, distance of flame from combustible materials, safety cut-off valves, method of installation, thermal or heating problems, inspection of curers, both before and after use, and any and all changes and standards that should be promulgated and made to reduce fire hazards and lower insurance costs and to protect the tobacco crops of farmers. The enumeration of certain standards as herein given shall not limit the authority of the Board of Agriculture to make rules and regulations involving other standards suggested by scientific information as the same relates to curers and related problems. (1947, c. 787; 1953, c. 727; 1975, c. 544.)

§ 81A-40. Sale of coal, coke and charcoal by weight. — (a) All coal, coke, or charcoal sold in this State shall be sold by weight only. The standard unit of weight shall be the avoirdupois pound, and a ton shall be 2,000 pounds.

(b) All coal, coke, or charcoal sold or offered for sale in this State, or which is being transported on any public street or highway in North Carolina, shall be weighed on scales suitable for such weighing which have been tested and sealed by the Commissioner or his authorized agent. It shall not be unlawful to transport such coal, coke, or charcoal to the nearest such scale for the purpose of having same weighed, but no sale or delivery of same shall take place until the load shall have been weighed.

(c) Each sale or delivery of coal, coke, or charcoal to the consumer shall be accompanied by a weight certificate on which shall be expressed in ink or other indelible substance the name and address of the seller or dealer, name and address of the purchaser or receiver, the kind and size of coal being delivered and the gross tare and net weights, the date of weighing, the signature of the weighmaster, a place for signature of receiver, the name of deliveryman, and the license number of delivery vehicle. The weight certificate shall be made with an original and two carbon copies, with one copy going to the purchaser or receiver, one copy to be held by the deliveryman, and the third copy to be held by the weighmaster; provided, however, that when coal, coke or charcoal is delivered in this State in railway carload lots, the railway bill of lading may be used in lieu of the weight certificate required by this section. (1949, c. 860; 1975, c. 544.)

§ 81A-41. Establishment of standard loaves of bread; "loaf" defined. — When loaves of bread are offered for sale or sold in this State, each loaf shall be one of the following weights and lengths and no other, to wit: one pound, 11 ½ inches maximum length, five inches maximum width at bottom; one and one-half pounds, 13 ½ inches maximum length, five inches maximum width at bottom; two pounds, 15 inches maximum length, five inches maximum width at bottom; two and one-half pounds, 16 ½ inches maximum length, five inches maximum width at bottom. The term "loaf" as used in this section shall be construed to mean a loaf which is baked in a pan of rectangular shape, either with straight-up or flared side, either with or without cover, and shall be known hereafter as the standard loaf. (1949, c. 1005; 1957, c. 374; 1975, c. 544.)

§ 81A-42. Standard weights and measures. — Whenever any commodity named in this section shall be quoted or sold by the bushel, the bushel shall be the number of pounds stated in this section and whenever quoted or sold in subdivisions of the bushel, the number of pounds shall be the fractional part of the number of pounds as set forth herein for the bushel, and when sold by the barrel shall consist of the number of pounds constituting 3.281 bushels.

<i>Commodity</i>	<i>Lbs. per bu.</i>	<i>Commodity</i>	<i>Lbs. per bu.</i>
Alfalfa	60	Apple seed	40
Apples, dried	24	Barley	48

<i>Commodity</i>	<i>Lbs. per bu.</i>
Beans, castor	46
Beans, dry lima	60
Beans, green in-pod lima	30
Beans, soy	60
Beef, net (per bbl.)	200
Beets	50
Blackberries	48
Blackberries, dried	28
Bran	20
Broomcorn	44
Buckwheat	50
Cabbage	50
Canary seed	60
Carrots	50
Cement	80
Charcoal	22
Cherries, with stems	56
Cherries, without stems	64
Clover seed, red and white	60
Clover, Burr	8
Clover, German	60
Clover, Japan, Lespedeza	25
Coal, stone	80
Coke	40
Corn, shelled	56
Corn, Kaffir	50
Corn, pop	70
Cotton seed	30
Cotton seed, Sea Island	44
Cucumbers	48
Fish	100
Flax seed	56
Grapes, with stems	48
Grapes, without stems	60
Gooseberries	48
Grass seed, Bermuda	14
Grass seed, blue	14
Grass seed, Hungarian	48
Grass seed, Johnson	25
Grass seed, Italian rye	20
Grass seed, orchard	14
Grass seed, tall meadow and fescue	24
Grass seed, all meadow and fescue except tall	14
Grass seed, perennial rye	14

<i>Commodity</i>	<i>Lbs. per bu.</i>
Grass seed, timothy	45
Grass, redtop	14
Grass seed, velvet	7
Hair, plaster	8
Hemp seed	44
Hominy	62
Horseradish	50
Land plaster	100
Lime, unslaked	80
Lime, slaked	40
Meal, corn, whether bolted or unbolted	48
Melon, cantaloupe	50
Millet	50
Mustard	58
Nuts, chestnuts	50
Nuts, hickory, without hulls	50
Nuts, walnut, without hulls	50
Oats, seed	32
Onions, button sets	32
Onions, top buttons	28
Onions, matured	57
Osage orange seed	33
Parsnips	50
Peaches, matured	50
Peaches, dried	25
Peach seed	50
Peanuts, Spanish	30
Peanuts	22
Pears, matured	56
Pears, dried	26
Peas, dry field	60
Peas, green in hull field	30
Pieplant	50
Plums	64
Pork net (per bbl.)	200
Potatoes, Irish	56
Potatoes, sweet green	56
Potatoes, sweet, dry weight	47
Quinces, matured	48
Raspberries	48
Rice, rough	44
Rye seed	56
Sage	4
Salads, mustard, spinach, turnips, and kale	10
Salt	50

<i>Commodity</i>	<i>Lbs. per bu.</i>	<i>Commodity</i>	<i>Lbs. per bu.</i>
Sorghum molasses (per gal.)	12	Teosinte	59
Sorghum seed	50	Tomatoes	56
Strawberries	48	Turnips	50
Sunflower seed	24	Wheat	60

It shall be unlawful to purchase or sell, or barter or exchange, any article named in this section on any other basis than as stated herein; provided, however, that any such articles may be sold by weight. (Code, ss. 3849, 3850; 1885, c. 26; 1905, c. 126; Rev., s. 3066; 1909, c. 555, s. 1; c. 835; 1915, c. 230, s. 1; 1917, c. 34; Ex. Sess. 1921, c. 87; 1931, c. 76; 1933, c. 523, s. 3; 1937, c. 354; 1949, c. 984; 1975, c. 544.)

§ 81A-43. **Standard rule for measurement of logs.** — The standard rule for determining the number of board feet in a tree or log shall be the so-called "International ¼ inch Log Rule." None of the provisions of this section shall apply to contracts entered into prior to June 11, 1975, nor to the measure of damages in any action in tort. This section shall not prevent the buyer and the seller from agreeing that some other log rule shall be used to determine the number of board feet in trees or logs covered by the contract between them. (1947, c. 400, s. 1; 1975, c. 544.)

§ 81A-44. **Authority to prescribe standards of weight or measurement for sale of milk or milk products.** — The Board of Agriculture is hereby authorized and empowered to adopt and promulgate, after notice and hearing, rules and regulations prescribing standards or units of weight or measure by which milk, cream or other fluids containing milk or milk products may be sold at retail in bottles or other capped or sealed containers, and the sale thereof by any other standards or units of weight or measure shall be unlawful. (1949, c. 982; 1975, c. 544.)

§§ 81A-45 to 81A-49: Reserved for future codification purposes.

ARTICLE 5.

Public Weighmasters.

§ 81A-50. **Weighing livestock sold at public livestock market; weight certificates.** — Whenever livestock is offered or exposed for sale, or sold by weight at a public livestock market, the livestock shall be weighed by a public weighmaster and each individual sale shall be accompanied with a weight certificate in duplicate on which shall be expressed in ink or other indelible substance, the name and address of seller, the kind, number and weight of livestock being offered for sale, or sold, the time of day and date of weighing and the name of the weighmaster. The information expressed on said certificate shall be announced or otherwise made known immediately preceding the sale, if said sale be by auction. (1943, c. 762, s. 1; 1975, c. 544.)

§ 81A-51. **Public weighmaster defined; to be licensed.** — Any person, either for himself or as a servant or agent of any other person, firm, or corporation, or who is elected by popular vote, who shall weigh, or measure, or count, or who shall ascertain from, or record, the indications or readings of, a weighing, or measuring, or recording, device or apparatus for any other person, firm, or corporation, and declare the weight, or measure or count, or reading, or recording to be the true weight, or measure, or count, or reading, or recording of any commodity, thing, article, or product upon which the purchase, or sale, or exchange, is based, and make a charge for, or collect pay, a fee, or any other compensation for such act, shall issue a certificate of weight, or measure, or

count, in accordance with the provisions of this Chapter, 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; 1975, c. 544.)

§ 81A-52. Application for license permit. — Any person not less than 18 years of age desiring to be a public weighmaster in this State shall apply for and obtain a license from the North Carolina Department of Agriculture by filing formal application under oath as follows: "I,, a citizen of the United States, residing at, county of have familiarized myself with the law and with full knowledge of the provisions contained therein relative to licensing of public weighmaster, do hereby file application for license to be issued accordingly. I certify that I am of sound mind and am physically fit to perform the duties imposed upon a public weighmaster and that I will, if licensed, abide by and enforce all laws, rules and regulations relating to a public weighmaster to the best of my knowledge and ability." (1939, c. 285, s. 2; 1949, c. 983, s. 1; 1975, c. 544.)

§ 81A-53. Forms of certificates of weight, etc., to be approved by Commissioner or authorized agent. — It shall be the duty of every public weighmaster licensed under this act to issue a certificate of weight, measure, count, reading, or recording on forms approved by the Commissioner or his authorized agent, and to enforce the provisions of this Chapter, together with rules and regulations relating thereto. Said public weighmasters shall not receive compensation from the State for the duties performed. (1939, c. 285, s. 3; 1975, c. 544.)

§ 81A-54. Official seal of public weighmaster. — It shall be the duty of every public weighmaster so licensed under this Article to obtain from the North Carolina Department of Agriculture an official seal for the sum of five dollars (\$5.00), which seal shall have inscribed thereon the following words: "North Carolina Public Weighmaster" and such other design and/or legend as the Commissioner or his authorized agent may deem appropriate. The seal shall be stamped or impressed upon each and every weight, measure, count, reading or recording certificate issued by such public weighmaster, and when so applied the certificate shall be recognized and accepted as a declaration of the official, true, and accurate and undisputed weight, measure, count, reading or recording of the commodity, product, or article weighed, or measured, or counted within the tolerance allowed by this Chapter; provided, however, that the weighers of tobacco in leaf tobacco warehouses may use, in lieu of said seal, a signature, which signature shall also appear, in ink or other indelible substance on the weighmaster's formal application, and again, posted in a conspicuous and accessible place in the tobacco warehouse where he is acting as a weighmaster. All public weighmasters' seals shall remain the property of the State of North Carolina. (1939, c. 285, s. 4; 1941, c. 317, s. 1; 1975, c. 544.)

§ 81A-55. Violations of provisions by weighmasters made misdemeanor. — Any public weighmaster who shall refuse to issue a certificate as prescribed by this Article, or who shall issue a certificate giving a false weight, or measure, or count, or reading, or recording, or who shall misrepresent the weight, or measure, or count, or reading, or recording of the quantity of any commodity, product or article to any person, firm or corporation, or who shall otherwise violate any of the provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00), or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court, and, in addition thereto, his license shall be revoked and he shall forfeit his seal which, when so forfeited, shall be turned over to the Commissioner or his authorized agent. (1939, c. 285, s. 5; 1975, c. 544.)

§ 81A-56. Requesting weighmaster to falsify weights; impersonation of weighmaster; alteration of certificate, etc. — Any person, firm, or corporation who shall request a public weighmaster to weigh, measure, count, read, or record any commodity, product or article falsely or incorrectly, or who shall request a false or inaccurate certificate of weight, measure, count, reading, or recording, or any person issuing a certificate of weight, or measure, or count, or reading, or recording within the meaning of this Article, who is not a public weighmaster as provided for by this Article, or who shall act as, or for, or in any way impersonate, a public weighmaster, or who shall erase, change, or alter any certificate issued by a public weighmaster, or who shall make incorrect the certificate by increasing or decreasing the weight or measure or count of the commodity, product or article certified to for the purpose of deception, or who shall violate any provision of this Article for which a special penalty has not been provided, shall be guilty of misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court. (1939, c. 285, s. 6; 1975, c. 544.)

§ 81A-57. Certificate of weighmasters presumed accurate and correct. — When a public weighmaster certificate is used in the sale, or purchase, or barter, or exchange of any commodity, product, or article, the certified weight, or measure, or count or reading or recording shall be deemed to be the true, accurate and undisputed weight, or measure or count, or reading or recording at time said commodity, product, or article is put into the natural channels of trade, which is, at the time of sale or purchase or barter or exchange; provided, however, that reasonable variations, or tolerances shall be permitted as established by rules and regulations as provided for by this Chapter. (1939, c. 285, s. 7; 1941, c. 317, s. 2; 1975, c. 544.)

§ 81A-58. Duty of custodian of product during time intervening between weighing and issuance of certificate. — If any commodity, product or article is to be offered for sale, or sold and is weighed or measured or counted by any public weighmaster and a certificate issued prior to sale, or acceptance of such commodity, product or article by the purchaser, his agent, or consignee, or if any commodity, product or article is offered for sale, sold, and/or delivered pending the weighing or measuring or counting of such commodity, product, or article by a public weighmaster and the issuance of a certificate, the person, firm, or corporation in whose custody said commodity, product or article is, shall keep, protect and prevent any increase or decrease in weight, measure or count, in the interim so that the declaration of weight, or measure, or count shall be true in accordance with G.S. 81A-57. The term "interim" as used in this section shall be construed to mean the time intervening between the weighing and issuance of certificate and the sale or purchase and the time intervening between the sale or purchase and the presentation of such commodity, product, or article to the public weighmaster for weighing or measuring or counting, and the issuance of certificate. Any loss sustained in the weight or measure or count of any commodity, product, or article while in custody shall be borne by the person, firm or corporation in whose custody said commodity, product, or article is. (1939, c. 285, s. 8; 1975, c. 544.)

§ 81A-59. Weighing tobacco in sales warehouses. — All leaf tobacco offered for sale in a leaf tobacco warehouse in this State shall be weighed by a public weighmaster, shall be accompanied by a public weighmaster certificate, and shall be and remain in custody of the warehouse operator from and after the time it is weighed by the public weighmaster until it is sold or the bid is rejected by the owner thereof. (1945, c. 1067; 1975, c. 544.)

§ 81A-60. Complaints to weighmaster or Commissioner of Agriculture. — When doubt or difference arises as to the correctness of the weight, or measure, or count, or reading, or recording of any amount or part of any commodity, product, or article for which a certificate of weight, measure, count, reading or recording, has been issued by a public weighmaster, the owner, agent or consignee shall make complaint before moving said commodity, product, or article from city, town or community where weight certificate was issued, to the public weighmaster issuing said certificate or to the Commissioner or his authorized agent setting forth the cause or causes for such doubt and/or difference, and have said amount, or part of the amount, or any commodity, product, or article reweighed, or remeasured, or recounted by the weighmaster issuing the certificate or by an authorized agent of the Commissioner; provided, the commodity, product or article is kept and protected as is required during the interim period provided for in G.S. 81A-58. If, on reweighing, remeasuring, or recounting, a difference in original weight, or measure or count, is sustained the difference thus sustained shall be that, and that only, which is in excess of tolerance allowed by this Chapter, and any desired adjustment as a result of such difference shall be made accordingly, and the cost of reweighing or remeasuring or recounting shall be borne by the public weighmaster responsible for the issuance of such faulty certificate; otherwise, the cost shall be borne by the complainant. (1939, c. 285, s. 9; 1941, c. 317, s. 3; 1975, c. 544.)

§ 81A-61. Approval of devices used. — It shall be unlawful for any public weighmaster to use any weights or measures, or weighing or measuring or reading or recording device, which has not been tested and approved by the Commissioner or his authorized agent in accordance with the provisions of this Chapter and the rules and regulations governing same. (1939, c. 285, s. 10; 1975, c. 544.)

§ 81A-62. Annual license for public weighmaster. — Public weighmasters shall be licensed for a period of one year beginning on the first day of July and ending on the thirtieth day of June, next, and a fee of ten dollars (\$10.00) shall be paid for each person so licensed to the Department of Agriculture at time of filing application, as set forth in G.S. 81A-52. (1939, c. 285, s. 11; 1943, c. 543; 1975, c. 544.)

§ 81A-63. Seal declared property of State. — The seal herein provided for shall be the property of the State of North Carolina and shall be forfeited and returned to the Commissioner or his authorized agent upon termination of the performance of duties herein described as being the duties of a public weighmaster. Failure or refusal of a person licensed as a public weighmaster under this Article to return, turn over, or surrender the official seal furnished by the Department of Agriculture upon expiration of term of license or for malfeasance in office shall be a misdemeanor and any person convicted thereof shall forfeit the amount paid for use of such seal and shall be punished by a fine of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00), or by imprisonment for not more than three months, or both such fine and imprisonment, in the discretion of the court. (1939, c. 285, s. 14; 1975, c. 544.)

§ 81A-64. Cotton weighing. — If any weigher or purchaser of cotton shall make any deduction from the weight of any bag, bale, or package of lint cotton, for or on account of the draft, turn, or break of the scales, steelyards, or other implement used in weighing the same, or for any other cause except as herein allowed, the person so offending shall be guilty of a misdemeanor, and fined not more than three hundred dollars (\$300.00) or imprisoned, in the discretion of the court; provided, however, that deductions may be made by the weigher for water, dirt, or other foreign substances on such bag, bale, or package of cotton, or for other just cause, but if such deductions are made, the nature of such

deductions shall be indicated upon the principal weight ticket which shall also show the gross weight of the cotton, the amount deducted as tare, and the net weight of said cotton. (1874-5, c. 58, ss. 1, 3; Code, s. 1007; Rev., s. 3816; C. S., s. 5085; 1943, c. 762, s. 2; 1975, c. 544.)

§§ 81A-65 to 81A-69: Reserved for future codification purposes.

ARTICLE 6.

Scale Technician.

§ 81A-70. Purpose of Article. — The purpose of this Article shall be to protect the owners and users of scales and weighing devices in their needs for scale repair and service, to provide for scale technician registration, and to provide for financial underwriting of services rendered. (1941, c. 237, s. 1; 1947, c. 380; 1975, c. 544.)

§ 81A-71. Prerequisites for scale technician. — It shall be unlawful for any scale technician to render service as a scale technician until after he or she has complied with the following requirements:

- (1) Obtained from the Department of Agriculture a copy of this Article, a copy of regulations pertinent to said Article, and an application form for registration.
- (2) Obtained bond in the sum of one thousand dollars (\$1,000) issued by a surety company licensed to do business in North Carolina.
- (3) Filed bond with the clerk of superior court of the county in which such applicant resides, unless he or she be a resident of some other state, in which event such bond shall be filed with the Clerk of Superior Court in Wake County, North Carolina.
- (4) Obtained a receipt in duplicate for such bond and filed the receipt with the clerk of superior court and mailed or delivered one copy of such receipt together with the application form for registration, completely filled out, to the Department of Agriculture, Raleigh, North Carolina.
- (5) Obtained a registration card or certificate from the Commissioner or his authorized agent and a model form of service certificate.

The provisions of this Article shall not apply to a full-time employee who renders service only on a scale or weighing device, or on scales or weighing devices, owned solely by his or her employer unless additional pay or compensation is received for such service. (1941, c. 237, s. 3; 1947, c. 380; 1975, c. 544.)

§ 81A-72. Registration; certificate of registration; annual renewal. — The Commissioner or his authorized agent shall register any person who has complied with the requirements of this Article by making a record of receipt of application and of bond, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale technician and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1 next and shall be renewed on the first day of July of each year thereafter. (1941, c. 237, ss. 4, 5; 1943, c. 543; 1947, c. 380; 1975, c. 544.)

§ 81A-73. Service certificate. — Whenever any service is rendered on any scale or weighing device used or intended to be used in this State by a scale technician, a certificate shall be issued by such scale technician who rendered said service, which shall be known as a "service certificate." The size and form of said service certificate shall be determined by the Commissioner or his authorized agent. Inclusive of other pertinent information or statements, the said certificate shall bear a statement expressed in ink or other indelible

substance naming the kind of service rendered, whether adjustment, installation, repair, or maintenance, and stating that a service test as defined under the term "service" has been made, and that the service rendered is guaranteed to be as represented. The service certificate shall be made out in triplicate, with original going to the owner of such scale or weighing device or his agent, and a duplicate shall be sent to the Commissioner or his authorized agent if service is upon a scale or weighing device which has been rejected or condemned by an authorized agent, and the triplicate copy shall be retained by the scale technician issuing such certificate. (1947, c. 380; 1975, c. 544.)

§ 81A-74. Bond. — The bond required by this Article shall underwrite the guarantee of a refund or compensation, covering any claim by owner of scale or weighing device for damage or injury, which claim is sustained by the court, resulting in misrepresentation of service rendered, or failure to comply with all the provisions of this Article, by the scale technician, regardless of his or her intent; provided, however, that the aggregate liability of the surety to all claimants sustained by the court shall in no event exceed the amount of said bond. (1947, c. 380; 1975, c. 544.)

§ 81A-75. Scale removal. — When a scale or weighing device is removed from the premises where located by a scale technician, the scale technician or his servant or agent shall issue a receipt for said scale or weighing device, on which shall be written in ink or other indelible substance the name and address of the owner, the name and address of receiving agent, date of receipt, anticipated date of return, name or make of scale, and such other information pertinent to its identification. The form of receipt shall be approved by the Commissioner or his authorized agent. (1947, c. 380; 1975, c. 544.)

§ 81A-76. Control of condemned or rejected scale. — It shall be unlawful for any owner of a scale or weighing device which has been condemned or rejected by the Commissioner or his authorized agent to either use or dispose of same in any manner other than at the direction of the Commissioner or his authorized agent; provided, however, said rejected scale or weighing device may be removed from the premises temporarily for repairs or service only. (1947, c. 380; 1975, c. 544.)

§ 81A-77. Secondhand scale. — It shall be unlawful for any person to sell, or offer for sale, or put into use, a secondhand or rebuilt or reconditioned scale or weighing device unless said scale shall have been tested and approved by the Commissioner or his authorized agent, or shall be accompanied by a service certificate as provided for in this Article. Said service certificate shall be retained by the purchaser or user of said scale until an inspector of weights and measures has tested and approved such secondhand scale. The said certificate shall serve as proof of the accuracy of scale at the time scale was purchased or put into service. A secondhand or rebuilt or reconditioned scale or weighing device as referred to in this section shall be considered as being a scale or weighing device in the channels of trade which does not belong to the previous user. (1947, c. 380; 1975, c. 544.)

§ 81A-78. Scale location. — It shall be unlawful for any scale or weighing device to be installed, set up, put into service, or used on a foundation or support that aids in giving false indication of weight values applied to platter, platform, or other load receiving element. (1947, c. 380; 1975, c. 544.)

§ 81A-79. Exemption. — The provisions of this Article shall not prohibit the user of a scale or weighing device from employing some person other than a scale technician to render service as defined by this Article upon his or her scale or weighing device, nor apply to the person so employed, who does not solicit such employment, provided that said user shall not be relieved of his or her

responsibility or liability concerning the accuracy of the scale or weighing device after service has been rendered. (1947, c. 380; 1975, c. 544.)

§ 81A-80. Penalty. — Any person who violates any of the provisions of this Article, or who for hire or award renders service as a scale technician on a scale or weighing device without registering as a scale technician or who shall fail to issue a service certificate or who shall issue a service certificate bearing false statements regarding service rendered, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than three months, or both fined and imprisoned. Upon conviction of violating this Article, a scale technician shall forfeit any charges or remuneration for service rendered, if service be involved. The scale technician and his bonding company shall, at the discretion of the court, reimburse or compensate the owner of the scale or weighing device in question for such damage, or injury, sustained. Upon a subsequent conviction of violation of this Article, the court in its discretion, may deny a scale technician the privilege to act as or in the capacity of a scale technician for a specified length of time. His registration card or certificate may be seized by the court and turned over to the Commissioner or his authorized agent with instruction concerning reinstatement or renewal. (1941, c. 237, s. 7; 1947, c. 380; 1949, c. 983, s. 2; 1975, c. 544.)

§§ 81A-81 to 81A-85: Reserved for future codification purposes.

ARTICLE 7.

General Provisions.

§ 81A-86. Regulations to be unaffected by repeal of prior enabling statute. — The adoption of this Chapter or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this Chapter or modified or revoked. (1975, c. 544.)

§ 81A-87. Severability provision. — If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. (1975, c. 544.)

§ 81A-88. Repeal of conflicting laws. — All laws and parts of laws contrary to or inconsistent with the provisions of this Chapter are repealed except as to offenses committed, liabilities incurred, and claims made thereunder prior to July 1, 1976. (1975, c. 544.)

Chapter 83.

Architects.

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

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 83-12. Practice without certificate unlawful.

Cited in *State v. Camp*, 286 N.C. 148, 209 S.E.2d 754 (1974).

Chapter 84.

Attorneys-at-Law.

Article 1.

Qualifications of Attorney; Unauthorized Practice of Law.

Sec.

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

Article 4.

North Carolina State Bar.

84-23. Powers of council.

84-23.1. Prepaid legal services.

Sec.

84-28. Discipline and disbarment.

84-28.1. Disciplinary hearing commission.

84-28.2. Persons immune from suit.

84-29. Evidence and witnesses.

84-30. Rights of accused person.

84-31. Counsel; investigators; powers; compensation.

84-32. Records and judgments and their effect; restoration of licenses.

84-36.1. Clerks of court to certify orders.

ARTICLE 1.

Qualifications of Attorney; Unauthorized Practice of Law.

§ 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:

(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 action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if he were a regularly admitted and licensed member 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, or any disciplinary matter, with the same effect as if personally made on such foreign attorney within this State.

(1975, c. 582, ss. 1, 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "action" for "actions" and inserted "and the North Carolina State Bar" near the end of subdivision (3) and inserted "or any disciplinary matter" near the end of subdivision (5).

Section 13 of the 1975 amendatory act

provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (3) and (5) are set out.

ARTICLE 3.

*Arguments.***§ 84-14. Court's control of argument.****Discretion of Court. —**

Argument of counsel must be left largely to the control and discretion of the presiding judge. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Counsel May Argue Both Law and Fact. —

Counsel for both sides are entitled to argue to the jury the law and the facts in evidence and all reasonable inferences to be drawn therefrom. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Counsel may not argue principles of law not relevant to the case. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Wide latitude is given counsel, etc. —

Counsel must be allowed wide latitude in the argument of hotly contested cases. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Because it is the duty of the prosecuting attorney to present the State's case with earnestness and vigor and to use every legitimate means to bring about a just conviction, in the discharge of that duty he should not be so restricted as to discourage a vigorous presentation of the State's case to the

jury. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Incompetent and Prejudicial Matters. —

Counsel may not place before the jury incompetent and prejudicial matters, and may not "travel outside the record" by injecting into his argument facts of his own knowledge or other facts not included in the evidence. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Language may be used consistent with the facts in evidence to present each side of the case. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Duty of Court to Censor Remarks. — The trial court has a duty, upon objection, to censor remarks not warranted by either the evidence or the law, or remarks calculated to mislead or prejudice the jury. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

If the impropriety in counsel's closing argument is gross, it is proper for the court, even in the absence of objection, to correct the abuse *ex mero motu*. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

ARTICLE 4.

*North Carolina State Bar.***§ 84-21. Organization of council; publication of rules, regulations and bylaws.**

Cited in *In re Willis*, 286 N.C. 207, 209 S.E.2d 457 (1974).

§ 84-23. Powers of council. — Subject to the superior authority of the General Assembly to legislate thereon by general law, and except as herein otherwise limited, the council is hereby vested, as an agency of the State, with the control of the discipline, disbarment and restoration of attorneys practicing law in this State. The council shall have power to administer this Article; to formulate and adopt rules of professional ethics and conduct; to formulate and adopt rules and procedures for discipline, incapacity and disability hearings; to publish an official journal concerning matters of interest to the legal profession; and to do all such things necessary in the furtherance of the purposes of this Article as are not prohibited by law. (1933, c. 210, s. 9; 1935, c. 74, s. 1; 1937, c. 51, s. 2; 1975, c. 582, s. 3.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted a former proviso at the end of the first sentence relating to appeal to the superior court from an order of suspension or disbarment and inserted "to formulate and adopt rules and procedures for discipline, incapacity and

disability hearings" near the middle of the second sentence.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

§ 84-23.1. Prepaid legal services. — (a) This section is in addition to and not a limitation of the powers and responsibilities of the council set out in G.S. 84-23. To the extent that this section deals with the same powers and responsibilities it shall be taken to be in amplification of those powers and not in derogation thereof.

(b) The council has the responsibility and duty of discipline and regulation of the practice of law in this State. Plans providing for prepaid legal services must be submitted to the council and may not be implemented or operated without the prior and continuing approval by the council as being proper under the statutes, rules and regulations governing the practice of law in this State; provided, however, the council shall not approve any plan for prepaid legal services which in any way restricts the right of the client or person receiving prepaid legal services to select his own attorney from the actual members of the North Carolina State Bar, or a member of any other state bar in any other state where the claim or cause of action may arise.

(c) The council is authorized to initiate and cause the creation of a nonprofit corporation pursuant to Chapter 55A of the General Statutes, for the purpose of providing for prepayment for legal services. The corporation authorized by this section shall have the following powers:

- (1) To provide for the collection of payments for the plan or plans it offers, the payment of legal fees in accordance with its approved plans, and the investment and safeguarding of funds held for such purposes.
- (2) To contract with insurance companies or other companies for actuarial services, administrative and other services, use of facilities, underwriting and reinsurance.
- (3) All other powers necessary and appropriate for the offering of plans for prepaid legal services.
- (4) All other powers granted to nonprofit corporations by law or by virtue of their charters and bylaws.

The corporation may not directly employ an attorney to perform legal services for another person. It shall not be subject to regulation under Chapter 58 of the General Statutes or other provisions relating to insurance companies, but it shall be subject to regulation pursuant to subsection (b) of this section. Neither the existence of this authorization, nor the creation of such a corporation shall limit the authority of the council to approve other plans for prepaid legal services. The council may cause funds of the North Carolina State Bar to be contributed, advanced or loaned to, or used for the benefit of the corporation so created upon such terms as the council deems appropriate, and pursuant to such regulations as the council may promulgate to assure such funds are used for the purposes herein provided.

(d) Notwithstanding approval of the council pursuant to subsection (b), any plan for prepaid legal services other than pursuant to subsection (c) is subject to regulation under Chapter 58 of the General Statutes if offered by a company engaged in the insurance business or if the plan itself constitutes the offering of insurance.

(e) Notwithstanding any other provision of this section or any other statute or law, no plan providing for prepaid legal services shall be authorized to exist or function in the State of North Carolina which in any way restricts or denies the client or person receiving prepaid legal services the right to select an attorney of his own choice from the active membership of the North Carolina State Bar, or a member of any other state bar in any other state where the claim or cause of action may arise to represent said person or client. (1975, c. 707, s. 1.)

Editor's Note. — Session Laws 1975, c. 707, s. 2, contains a severability clause.

§ 84-24. Admission to practice.

Constitutionality. — The “character and general fitness” requirement of this section and the “good moral character” requirement of Rule VIII of the Rules Governing Admission to the Practice of Law are constitutionally permissible standards. In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975).

While a state cannot exclude a person from the practice of law for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment, a state can require high standards for admission to the bar, including good moral character and proficiency in its laws, so long as the qualifying standards have a rational connection with the applicant’s fitness or capacity to practice law. In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975).

The term “good moral character,” although broad, has been so extensively used as a standard that its long usage and the case law surrounding that usage have given the term well-defined contours which make it a constitutionally appropriate standard. In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975).

The Board of Law Examiners is, etc. —

This section establishes the Board of Law Examiners as an administrative agency of the State, and its findings of fact are conclusive on appeal if properly supported by the evidence. In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975).

Rule-Making Power Delegated. —

In licensing those who desire to engage in professions or occupations such as may be proper subjects of such regulation, the legislature may confer upon executive officers or bodies the power of granting or refusing to license persons to enter such trades or professions only when it has prescribed a sufficient standard for their guidance. In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975).

The findings of fact, etc. —

As long as there is evidence in the record which rationally justifies a finding that the applicant has failed to establish his moral fitness to practice law, this court cannot substitute its judgment for that of the Board of Law Examiners. In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975).

Cited in In re Willis, 286 N.C. 207, 209 S.E.2d 457 (1974).

§ 84-28. Discipline and disbarment. — (a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the council of the North Carolina State Bar under such rules and procedures as the council shall promulgate as provided in G.S. 84-21.

(b) The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice under G.S. 84-4.1, individually or in concert with any other person or persons, shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:

- (1) Conviction of a criminal offense showing professional unfitness;
- (2) The violation of the Code of Professional Responsibility adopted and promulgated by the council of the North Carolina State Bar in effect at the time of the act;
- (3) Knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct; failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter; or contempt of the council or any committee of the North Carolina State Bar.

(c) Misconduct by any attorney shall be grounds for:

- (1) Disbarment; or
- (2) Suspension for a period not exceeding three years; or
- (3) Public censure; or
- (4) Private reprimand.

(d) Any attorney admitted to practice law in this State who is convicted of a criminal offense showing professional unfitness may be suspended from the practice of law, but such suspension shall not take effect pending any appeal of the conviction.

(e) Any attorney admitted to practice law in this State who is disciplined in another jurisdiction shall be subject to the same discipline in this State: Provided, that the discipline imposed in the other jurisdiction does not exceed that provided

for in subsection (c) above and that the attorney was not deprived of due process in the other jurisdiction.

(f) Upon application by the North Carolina State Bar, misconduct by an attorney admitted to practice in this State may be restrained or enjoined where the necessity for prompt action exists regardless of whether a disciplinary proceeding in the matter of such conduct is pending. Such application shall be filed in the Superior Court of Wake County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65.

(g) Any member of the North Carolina State Bar may be transferred to inactive status for mental incompetence or physical disability interfering with the attorney's ability to competently engage in the practice of law under such rules and procedures as the council shall promulgate as provided in G.S. 84-21.

(h) There shall be an appeal of right from any final order imposing reprimand, censure, suspension or disbarment upon an attorney, or involuntary transferring a member of the North Carolina State Bar to inactive status for mental incompetence or physical disability, to the appellate division. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any such appeal shall be as provided by statute or court rule for appeals in civil cases. Any discipline imposed by such final order shall be stayed pending determination of the appeal.

(i) The North Carolina State Bar may invoke the process of the General Court of Justice to enforce the powers of the council or any committee to which the council delegates its authority.

(j) The North Carolina State Bar may apply to appropriate courts for orders necessary to protect the interests of clients of missing, disabled, incapacitated or deceased attorneys.

The senior regular resident judge of the superior court of any district wherein a member of the North Carolina State Bar resides or maintains an office shall have the authority and power to enter such orders as are necessary to protect the interests of such clients, including the authority to order the payment of counsel fees from the estate of the member to any attorney appointed to administer or conserve the law practice of the member. (1933, c. 210, s. 11; 1937, c. 51, s. 3; 1959, c. 1282, ss. 1, 2; 1961, c. 1075; 1969, c. 44, s. 61; 1975, c. 582, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote this section.

Section 13 of the 1975 amendatory act

provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

§ 84-28.1. Disciplinary hearing commission. — (1) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of 15 members. Ten of these members shall be members of the North Carolina State Bar, and shall be appointed by the council. The other five shall be citizens of North Carolina not licensed to practice law in this or any other state, three of whom shall be appointed by the Governor, one by the Lieutenant Governor, and one by the Speaker of the House of Representatives. The council shall designate one of its appointees as chairman and another as vice-chairman. The chairman shall have actively practiced law in the courts of the State for at least 10 years. When the commission is first selected, five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Speaker of the House of Representatives, shall be appointed for terms of one year; five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Lieutenant Governor, shall be appointed for terms of two years; and the remaining five members shall be appointed for terms of three years. All such initial terms shall

commence July 1, 1975. Thereafter five members shall be appointed each year to three-year terms to fill the positions of the terms then expiring. The council, the Governor, the Lieutenant Governor and the Speaker of the House of Representatives, respectively, shall appoint members to fill the unexpired term when any vacancy is created by resignation, disqualification, disability or death. No member may serve more than a total of six years or two consecutive terms: Provided, that any member or former member who is designated chairman may serve one additional three-year term in that capacity. No member of the council may be appointed to the commission.

(2) The disciplinary hearing commission of the North Carolina State Bar, or any committee thereof, is authorized to hold hearings in discipline, incapacity and disability matters, to make findings of fact and conclusions of law after such hearings, and to enter orders necessary to carry out the duties delegated to it by the council.

(3) Members of the disciplinary hearing commission shall receive the same per diem and travel expenses as are authorized for members of State commissions under G.S. 138-5. (1975, c. 582, s. 6.)

Editor's Note. — Session Laws 1975, c. 582, s. 13, makes the act effective July 1, 1975, and provides that it shall apply to all cases, actions and proceedings arising on and after that date.

§ 84-28.2. Persons immune from suit. — Persons shall be immune from suit for all statements made without malice, and intended for transmittal to the North Carolina State Bar or any committee, officer, agent or employee thereof, or given in any investigation or proceedings, pertaining to alleged misconduct, incapacity or disability or to reinstatement of an attorney. The protection of this immunity does not exist, however, as to statements made to others not intended for such use. (1975, c. 582, s. 4.)

Editor's Note. — Session Laws 1975, c. 582, s. 13, makes the act effective July 1, 1975, and provides that it shall apply to all cases, actions and proceedings arising on and after that date.

§ 84-29. Evidence and witnesses. — In any investigation of charges of professional misconduct, incapacity or disability the council and any committee thereof, and the disciplinary hearing commission, and any committee thereof, may administer oaths and affirmations and shall have the power to subpoena and examine witnesses under oath, and to compel their attendance, and the production of books, papers and other documents or writings deemed by it necessary or material to the inquiry. Each subpoena shall be issued under the hand of the secretary-treasurer or the president of the council or the chairman of the committee appointed to hear the charges, and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the council or its committee, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings, but the council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the State be brought before it. Witnesses giving testimony under a subpoena before the council or any committee thereof, or the disciplinary hearing commission or any committee thereof, or by deposition, shall be entitled to the same fees as in civil actions.

In cases heard before the council or any committee thereof or the disciplinary hearing commission or any committee thereof, if the party shall be convicted

of the charges against him, he shall be taxed with the cost of the hearings: Provided, however, that such bill of costs shall not include any compensation to the members of the council or committee before whom the hearings are conducted. (1933, c. 210, s. 12; 1959, c. 1282, s. 2; 1975, c. 582, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the first sentence, deleted "summons or" following "Each" at the beginning of the second sentence and substituted "the disciplinary hearing commission or any committee thereof" for "any committee designated by the Supreme Court" in

the fourth sentence of the first paragraph and near the beginning of the second paragraph.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

§ 84-30. Rights of accused person. — Any person who shall stand charged with an offense cognizable by the council or any committee thereof or the disciplinary hearing commission or any committee thereof shall have the right to invoke and have exercised in his favor the powers of the council or any committee, in respect of compulsory process for witnesses and for the production of books, papers, and other writings and documents, and shall also have the right to be represented by counsel. (1933, c. 210, s. 13; 1959, c. 1282, s. 2; 1975, c. 582, s. 8.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "or the disciplinary hearing commission or any committee thereof" for "any committee designated by the Supreme Court" and "or any committee" for "and its committees, or any

committee designated by the Supreme Court."

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

§ 84-31. Counsel; investigators; powers; compensation. — The council may appoint a member of the North Carolina State Bar to prosecute charges of misconduct, incapacity or disability in such hearings as may be held, including appeals, and may authorize such counsel to employ assistant counsel, investigators, and administrative assistants in such numbers as it deems necessary. Counsel and investigators engaged in discipline, incapacity and disability matters shall have the authority throughout the State to serve subpoenas or other process issued by the council or any committee thereof or the disciplinary hearing commission or any committee thereof, in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice. The council may allow counsel, assistant counsel, investigators and administrative assistants such compensation as it deems proper. (1933, c. 210, s. 14; 1969, c. 44, s. 62; 1975, c. 582, s. 9.)

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

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions

and proceedings arising on and after its effective date.

§ 84-32. Records and judgments and their effect; restoration of licenses. — In cases heard by the disciplinary hearing commission or any committee thereof, a complete record of the proceedings and evidence shall be made and preserved in the office of the secretary-treasurer. Final judgments of suspension or disbarment shall be entered upon the judgment docket of the superior court in the district wherein the accused resides or practices law, and also upon the minutes of the Supreme Court of North Carolina; and such judgment shall be effective throughout the State.

Whenever an attorney desires to voluntarily surrender his license to the council and the council consents to accept the same, he shall make such request and surrender in writing directed to the council and the council shall enter an order containing the conditions of acceptance of said license, and a copy of such order shall be filed with the clerk of the Supreme Court and with the clerk of the superior court of the county of residence or prior residence of the licensee or the county wherein the attorney maintains an office for the practice of law; provided, however, that the council may refuse to accept surrender of license in any case.

Whenever any attorney has been deprived of his license, the council, in its discretion, may restore said license upon due notice being given and satisfactory evidence produced of proper reformation of the licentiate before restoration. The council may prescribe rules and procedures for the conduct of any hearing regarding restoration and may require the disciplinary hearing commission or a committee thereof to conduct such hearing. (1933, c. 210, s. 15; 1935, c. 74, s. 2; 1953, c. 1310, s. 4; 1959, c. 1282, s. 2; 1975, c. 582, s. 10.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the first paragraph, inserted "or the county wherein the attorney maintains an office for the practice of law" near the end of the second paragraph, deleted "and hearing had" following "notice being given" in the first sentence of the third

paragraph and added the second sentence of the third paragraph.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

§ 84-36.1. Clerks of court to certify orders. — The clerk of any court of this State in which a member of the North Carolina State Bar is convicted of any criminal offense, disciplined, found to be in contempt of the court or adjudged incompetent shall transmit a certified copy of the order or judgment to the secretary-treasurer of the North Carolina State Bar within 10 days of the entry of such judgment or order. (1975, c. 582, s. 11.)

Editor's Note. — Session Laws 1975, c. 582, s. 13, makes the act effective July 1, 1975, and

provides that it shall apply to all cases, actions and proceedings arising on and after that date.

Chapter 85A.

Bail Bondsmen and Runners.

§§ 85A-1 to 85A-34: Recodified as §§ 85C-1 to 85C-41, effective October 1, 1975.

Editor's Note. — This Chapter was rewritten by Session Laws 1975, c. 619, s. 1, effective Oct. 1, 1975, and has been recodified as Chapter 85C.

Former § 85A-34 was amended by Session Laws 1975, c. 16, which made the Chapter

applicable to Burke County, and by Session Laws 1975, c. 560, which made the Chapter applicable to Carteret, Craven, Forsyth, Pitt and Pamlico Counties.

Chapter 85B.

Auctions and Auctioneers.

Sec.	Sec.
85B-3. Auctioneers Commission.	85B-8. Prohibited acts; suspension or revocation of license.
85B-4. Licenses required.	85B-9. Penalties and enforcement.
85B-6. Fees; local governments not to charge fees or require licenses.	

§ 85B-3. Auctioneers Commission.

(g) Members of the Commission shall receive the compensation set for members of occupational licensing boards by G.S. 93B-5. (1973, c. 552, s. 3; 1975, c. 648, s. 1.)

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

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

§ 85B-4. Licenses required.

(d) No person shall be licensed as an auctioneer unless he has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in Raleigh, and at such other times and places as the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has been in the auctioneer business in this State for at least two years prior to the effective date of this act, and who makes proper application to the Commission within one year after July 1, 1973, may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice of two years, and without taking the examination required by this subsection. Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution approved by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but must take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of his performance as an apprentice auctioneer. If the applicant is exempted from apprenticeship because he has completed the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of his course work in auctioneering. Each application shall be accompanied by statements of at least two residents of North Carolina attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license.

(e) Each license issued under this Chapter shall be valid from July 1 of the year issued, or from the date issued, whichever is later, to June 30 of the succeeding year and may be renewed for one year at a time, except an apprentice auctioneer license may not be renewed for more than three times. No

examination shall be required for renewal of an auctioneer license if the application for renewal is made within 90 days of the expiration of the previous license.

(g) A sole proprietorship, partnership, or corporation which in the regular course of business promotes auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions, must be licensed as an auctioneer business even though no owner or officer of that business acts as an auctioneer. To be licensed as an auctioneer business the sole proprietorship, partnership or corporation must file an approved bond as required for a licensed auctioneer by subsection (f) and must pay the proper fees as set out in G.S. 85B-6, but is not otherwise required to meet qualifications for an auctioneer license. Licensed auctioneer businesses shall be covered by the provisions of G.S. 85B-8.

(1975, c. 648, ss. 2-4.)

Editor's Note. —

The 1975 amendment substituted "Commission" for "Committee" at the end of the second sentence of the second paragraph of subsection (d), and in subsection (e), substituted "license issued under this Chapter" for "apprentice auctioneer and auctioneer license" and the language beginning "from July 1 of the year issued" and ending "June 30 of the

succeeding year" for "for one year," deleted "that" preceding "an apprentice auctioneer license," and inserted "for" following "may not be renewed." The amendment also rewrote subsection (g).

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

§ 85B-6. Fees; local governments not to charge fees or require licenses. — The Commission shall collect and remit to the State Treasurer the following fees: fifty dollars (\$50.00) for application for apprentice auctioneer license; twenty-five dollars (\$25.00) for apprentice auctioneer license for one year; twenty-five dollars (\$25.00) for application for auctioneer license and for examination; one hundred dollars (\$100.00) for auctioneer license for one year; seventy-five dollars (\$75.00) for designation as licensed auctioneer business.

No local government or agency of local government may charge any auctioneer fees or require any auctioneer licenses in addition to those set out in this Chapter. (1973, c. 552, s. 6; c. 1195, s. 3; 1975, c. 648, s. 5.)

Editor's Note. —

The 1975 amendment substituted "business" for "partnership or corporation" at the end of the first paragraph.

§ 85B-8. Prohibited acts; suspension or revocation of license. — (a) The following shall be grounds for suspension or revocation of an auctioneer or apprentice auctioneer license:

- (1) Any violation of this Chapter or any violation of a rule or regulation duly adopted by the Commission;
- (2) A continued and flagrant course of misrepresentation or making false promises, either by the auctioneer or by someone acting in his behalf and with his consent;
- (3) Any failure to account for or to pay over within a reasonable time, not to exceed 30 days, money belonging to another which has come into the auctioneer's possession through an auction sale;
- (4) Any misleading or untruthful advertising;
- (5) Any act of conduct in connection with a sales transaction which demonstrates bad faith or dishonesty;

- (6) Knowingly using false bidders, cappers or pullers, or making a material false statement for license;
- (7) Commingling the money or property of a client with his own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in North Carolina money received for another person through sale at auction.

(1975, c. 648, s. 6.)

Editor's Note. —

The 1975 amendment added subdivision (7) to subsection (a).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

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

§ 85B-9. Penalties and enforcement. — (a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a misdemeanor and shall be punished by fine, or imprisonment, or both, in the discretion of the court.

(1975, c. 648, s. 7.)

Editor's Note. — The 1975 amendment substituted "of" for "or" following "association" in subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

Chapter 85C.**Bail Bondsmen and Runners.**

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| <p>Sec.
85C-1. Definitions.</p> <p>85C-2. Commissioner of Insurance to administer Chapter; rules and regulations; employees; evidence of Commissioner's actions.</p> <p>85C-3. Defects not to invalidate undertakings; liability not affected by agreement or lack of qualifications.</p> <p>85C-4. Qualifications of sureties on bail.</p> <p>85C-5. Surrender of defendant by surety; when premium need not be returned.</p> <p>85C-6. Procedure for surrender; exoneration of obligors; refund of deposit.</p> <p>85C-7. Arrest of defendant for purpose of surrender.</p> <p>85C-8. Forfeiture of bail.</p> <p>85C-9. Bail bondsmen and runners to be qualified and licensed; only individuals to be licensed; license applications generally.</p> <p>85C-10. Expiration of licenses.</p> <p>85C-11. Qualification for professional bondsman and runners.</p> <p>85C-12. License fees.</p> <p>85C-13. Annual financial statement of professional bondsmen.</p> <p>85C-14. Contents of application for runner's license; endorsement by bail bondsman.</p> <p>85C-15. Examination; fees.</p> <p>85C-16. Renewal of licenses; fees.</p> <p>85C-17. Grounds for denial, suspension, revocation or refusal to renew licenses.</p> <p>85C-18. Notice and hearing before refusal, suspension, revocation, etc., of license.</p> <p>85C-19. Appeal from denial, suspension, revocation or refusal to renew license.</p> <p>85C-20. Prohibited practices.</p> | <p>Sec.
85C-21. Receipts for collateral.</p> <p>85C-22. Persons prohibited from becoming surety or runners.</p> <p>85C-23. Bonds not to be signed in blank; authority to countersign only given to licensed employee.</p> <p>85C-24. Insurers to annually report surety bondsmen; notices of appointments and terminations; information confidential.</p> <p>85C-25. Bail bondsman to give notice of discontinuance of business; cancellation of license.</p> <p>85C-26. Persons eligible as runners; bail bondsmen to annually report runners; notices of appointments and terminations; information confidential.</p> <p>85C-27. Substituting bail by sureties for deposit.</p> <p>85C-28. Deposit for defendant admitted to bail authorizes release and cancellation of undertaking.</p> <p>85C-29. Registration of licenses and power of appointments by insurers.</p> <p>85C-30. Financial responsibility of professional bondsmen.</p> <p>85C-31. Securities held in trust by Commissioner; authority to dispose of same.</p> <p>85C-32. Bondsman to furnish power of attorney with securities.</p> <p>85C-33. Security deposit to be maintained.</p> <p>85C-34. Monthly report required.</p> <p>85C-35. Examinations.</p> <p>85C-36. Limit on principal amount of bond to be written by professional bondsman.</p> <p>85C-37. Disposition of fees.</p> <p>85C-38. Penalties for violations.</p> <p>85C-39. Duplication of regulation forbidden.</p> <p>85C-40. Conflicting laws.</p> <p>85C-41. Application of Chapter.</p> |
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Editor's Note. — This Chapter is Chapter 85A as rewritten by Session Laws 1975, c. 619, s. 1, effective Oct. 1, 1975, and recodified. Where appropriate, the historical citations to the

sections of the former Chapter have been added to the corresponding sections of the new Chapter.

§ 85C-1. Definitions. — The following words when used in this Chapter shall have the following meanings:

- (1) "Accommodation bondsman" is a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives

no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. "Consideration" as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of said bail bond.

- (2) "Bail bond" shall mean an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 109-25, and an appearance bond secured by at least one surety.
- (3) "Bail bondsman" shall mean a surety bondsman, professional bondsman or an accommodation bondsman as hereinafter defined.
- (4) "Commissioner" shall mean the Commissioner of Insurance.
- (5) "Insurer" shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.
- (6) "Obligor" shall mean a principal or a surety on a bail bond.
- (7) "Principal" shall mean a defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.
- (8) "Professional bondsman" shall mean any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.
- (9) "Runner" shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. "Runner" does not include, however, a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.
- (10) "Surety" shall mean one who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.
- (11) "Surety bondsman" shall mean any person who is approved by and licensed by the Commissioner as an insurance agent pursuant to the provisions of Chapter 58 of the General Statutes of North Carolina and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings and receives or is promised money or other things of value therefor. (1963, c. 1225, s. 1; 1975, c. 619, s. 1.)

§ 85C-2. Commissioner of Insurance to administer Chapter; rules and regulations; employees; evidence of Commissioner's actions. — (a) The Commissioner shall have full power and authority to administer the provisions of this Chapter, which regulates bail bondsmen and runners and to that end to adopt and promulgate rules and regulations to enforce the purposes and provisions of this Chapter. Subject to the provisions of the State Personnel Act,

the Commissioner may employ and discharge such employees, examiners, investigators and such other assistants as shall be deemed necessary, and he shall prescribe their duties.

(b) Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the Commissioner, or any record of the Commissioner authenticated under the head of the Commissioner by the seal of his office shall be accepted by all the courts of this State as prima facie evidence of the contents thereof. (1963, c. 1225, s. 2; 1975, c. 619, s. 1.)

§ 85C-3. Defects not to invalidate undertakings; liability not affected by agreement or lack of qualifications. — No undertaking shall be invalid, nor shall any person be discharged from his undertaking, nor a forfeiture thereof be stayed, nor shall judgment thereon be stayed, set aside or reversed, the collection of any such judgment be barred or defeated by reason of any defect of form, omission or recital or of condition, failure to note or record the default of any principal or surety, or because of any other irregularity, or because the undertaking was entered into on Sunday or other holiday, if it appears from the tenor of the undertaking before what magistrate or at what court the principal was bound to appear, and that the official before whom it was entered into was legally authorized to take it and the amount of bail is stated.

The liability of a person on an undertaking shall not be affected by reason of the lack of any qualifications, sufficiency or competency provided in the criminal procedure law, or by reason of any other agreement whether or not the agreement is expressed in the undertaking, or because the defendant has not joined in the undertaking. (1963, c. 1225, s. 3; 1975, c. 619, s. 1.)

§ 85C-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; or
- (3) An accommodation bondsman. (1963, c. 1225, s. 4; 1971, c. 1231, s. 1; 1975, c. 619, s. 1.)

§ 85C-5. Surrender of defendant by surety; when premium need not be returned. — At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed; in such case the full premium shall be returned. The defendant may be surrendered without the return of premium for the bond if he has been guilty of nonpayment of premium, changing address without notifying his bondsman, concealing himself, leaving the jurisdiction of the court without the permission of his bondsman or violating his obligation to the court. (1963, c. 1225, s. 5; 1975, c. 619, s. 1.)

§ 85C-6. Procedure for surrender; exoneration of obligors; refund of deposit. — The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.

Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertak-

ings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded. (1963, c. 1225, s. 6; 1975, c. 619, s. 1.)

§ 85C-7. Arrest of defendant for purpose of surrender. — For the purpose of surrendering the defendant, the surety may arrest him before the forfeiture of the undertaking, or by his written authority endorsed on a certified copy of the undertaking, may request any judicial officer to order arrest of the defendant. (1963, c. 1225, s. 7; 1975, c. 619, s. 1.)

§ 85C-8. Forfeiture of bail. — (a) The procedure for forfeiture of bail shall be that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of that Article shall continue in full force and effect.

(b) At any time before execution is issued on a judgment of forfeiture against a principal or his surety, the court may direct that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. (1963, c. 1225, s. 8; 1975, c. 619, s. 1.)

§ 85C-9. Bail bondsmen and runners to be qualified and licensed; only individuals to be licensed; license applications generally. — No person shall act in the capacity of a bail bondsman or runner or perform any of the functions, duties, or powers prescribed for bail bondsmen or runners under the provisions of this Chapter unless that person shall be qualified and (except as regards an accommodation bondsman) licensed in accordance with the provisions of this Chapter. No license shall be issued to a professional bondsman or runner except as provided in this Chapter and none shall be issued except to an individual natural person.

The applicant shall apply for license or renewal thereof on forms prepared and supplied by the Commissioner and the Commissioner may propound any reasonable interrogatories to an applicant for a license under this Chapter or on any renewal thereof, relating to his qualifications, residence, prospective place of business, and any other matters which, in the opinion of the Commissioner, are deemed necessary in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation he sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

The failure of the applicant to secure approval of the Commissioner shall not preclude him from applying as many times as he desires, but no application shall be considered by the Commissioner within one year subsequent to the date upon which the Commissioner denied the last application. (1963, c. 1225, s. 9; 1975, c. 619, s. 1.)

§ 85C-10. Expiration of licenses. — All licenses issued pursuant to the provisions of this Chapter shall expire annually on June 30 unless revoked or suspended prior thereto by the Commissioner, or upon notice served upon the Commissioner that the employer of any runner has canceled the licensee's authority to act for such employer. (1963, c. 1225, s. 10; 1975, c. 619, s. 1.)

§ 85C-11. Qualification for professional bondsman and runners. — Before license can issue to an applicant permitting him to act as a professional bondsman or runner, he must furnish the Commissioner a complete set of his fingerprints and a recent passport size full-face photograph of himself. The applicant's fingerprints shall be certified by an authorized law-enforcement officer.

Every applicant for license as a professional bondsman or runner before being issued such license shall satisfy the Commissioner that he:

- (1) Is 18 years of age or over;

- (2) Is a resident of this State;
- (3) Is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude;
- (4) Has knowledge, training, or experience of sufficient duration and extent to reasonably satisfy the Commissioner that he possesses the competence necessary to fulfill the responsibilities of a licensee. (1963, c. 1225, s. 11; 1971, c. 1231, s. 1; 1975, c. 619, s. 1.)

§ 85C-12. License fees. — A license fee of thirty dollars (\$30.00) shall be paid to the Commissioner with each application for license as a professional bondsman and a license fee of ten dollars (\$10.00) shall be paid to the Commissioner with each application for license as a runner. (1963, c. 1225, s. 12; 1975, c. 619, s. 1.)

§ 85C-13. Annual financial statement of professional bondsmen. — In addition to the other requirements of this Chapter, an applicant for a professional bondsman's license shall furnish annually a financial statement under oath in such detail and form as the Commissioner may require and any such statement shall be subject to the same examination as is prescribed by law for domestic insurance companies. (1963, c. 1225, s. 13; 1975, c. 619, s. 1.)

§ 85C-14. Contents of application for runner's license; endorsement by bail bondsman. — In addition to the other requirements of this Chapter, an applicant for a license to be a runner must affirmatively show:

- (1) That the applicant will be employed by only one bail bondsman who will supervise the work of the applicant and be responsible for the runner's conduct in the bail bond business; and
- (2) That the application is endorsed by the appointing bail bondsman who shall obligate himself therein to supervise the runner's activities. (1963, c. 1225, s. 14; 1975, c. 619, s. 1.)

§ 85C-15. Examination; fees. — Except as hereinafter provided, an applicant for license to be a professional bondsman or runner shall be required to appear in person and take a written examination prepared by the Commissioner testing his ability and qualifications. Each applicant shall become eligible for examination 30 days after the date the application is received by the Commissioner. Examinations shall be held at such time and place as designated by the Commissioner, and the applicant shall be given notice of such time and place not less than 15 days prior to taking the examination. The fee for such examination shall be fifteen dollars (\$15.00) for professional bondsmen and ten dollars (\$10.00) for runners. The failure of an applicant to pass an examination shall not preclude him from taking subsequent examinations; provided, however, that at least one year must intervene between examinations.

No person shall be required to submit to examination to obtain license as a professional bondsman if he is now licensed by the Commissioner of Insurance or the Secretary of Revenue and is performing the functions of a bondsman on the taking effect of this Chapter, and no person shall be required to submit to examination to obtain license as a runner if he is performing the functions of a runner on the taking effect of this Chapter. (1963, c. 1225, s. 15; 1975, c. 619, s. 1.)

§ 85C-16. Renewal of licenses; fees. — A renewal license shall be issued by the Commissioner to a licensee who has continuously maintained his license in effect without further examination upon the payment of a renewal fee of ten dollars (\$10.00) in case of runners and thirty dollars (\$30.00) in case of professional bondsmen, but such licensees shall in all other respects be required to comply with and be subject to the provisions of this Chapter. After the receipt of such licensee's application for renewal, the current license shall continue in

effect until the renewal license is issued or denied for cause. (1963, c. 1225, s. 16; 1975, c. 619, s. 1.)

§ 85C-17. Grounds for denial, suspension, revocation or refusal to renew licenses. — (a) The Commissioner may deny, suspend, revoke or refuse to renew any license issued under this Chapter for any of the following causes:

- (1) For any cause sufficient to deny, suspend, or revoke license under any other provision of this Chapter.
- (2) Violation of any laws of this State relating to bail in the course of dealings under the license issued him by the Commissioner.
- (3) Material misstatement, misrepresentation or fraud in obtaining the license.
- (4) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.
- (5) Fraudulent or dishonest practices in the conduct of business under the license.
- (6) Conviction of a felony regardless of the time such conviction occurred and regardless of whether such conviction resulted from conduct in or related to the bail bond business.
- (7) Failure to comply with or violation of the provisions of this Chapter or of any order, rule or regulation of the Commissioner.
- (8) When in the judgment of the Commissioner, the licensee has in the conduct of his affairs under the license, demonstrated incompetency or untrustworthiness or that he is no longer in good faith carrying on the bail bond business or that he is guilty of rebating, or offering to rebate, or offering to divide the premiums received for the bond.
- (9) For failing to pay any judgment or decree rendered on any forfeited undertaking in any court of competent jurisdiction.
- (10) For charging or receiving, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by this Chapter.
- (11) For requiring, as a condition of his executing a bail bond, that the principal agree to engage the services of a specified attorney.

(b) The Commissioner, in lieu of revoking or suspending a license in accordance with the provisions of this Chapter, may, in any one proceeding, by order, require the licensee to pay to the school fund in the county of his residence a civil penalty in the sum of two hundred fifty dollars (\$250.00) for each offense. Upon failure of such licensee to pay penalty within 20 days after the mailing of such order, postage prepaid, registered and addressed to the last known place of business of such licensee, unless such order is stayed by an order of the court of competent jurisdiction, the Commissioner may revoke the license of such licensee or may suspend the same for such period as he may determine. (1963, c. 1225, s. 17; 1975, c. 619, s. 1.)

§ 85C-18. Notice and hearing before refusal, suspension, revocation, etc., of license. — No license shall be refused, suspended, revoked, or renewal refused except on reasonable notice and opportunity to be heard afforded the person licensed or renewal thereof. (1963, c. 1225, s. 18; 1975, c. 619, s. 1.)

§ 85C-19. Appeal from denial, suspension, revocation or refusal to renew license. — Any applicant for license as bail bondsman or runner whose application has been denied or whose license shall have been suspended or revoked, or renewal thereof denied, shall have the right of appeal from such final order of the Commissioner thereon pursuant to the provisions of G.S. 58-9.3. (1963, c. 1225, s. 19; 1975, c. 619, s. 1.)

§ 85C-20. Prohibited practices. — No bail bondsman or runner shall:

Pay a fee or rebate or give or promise anything of value, directly or indirectly, to a jailer, law-enforcement officer, committing magistrate, or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof, including the payment to law-enforcement officers, directly or indirectly, for the arrest or apprehension of a principal or principals who have caused or will cause a forfeiture.

Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.

Participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety, nor suggest or advise the employment of, or name for employment any particular attorney to represent his principal.

Accept anything of value from a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond, provided that the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond.

Solicit business in any of the courts or on the premises of any of the courts of this State, in the office of any magistrate and in or about any place where prisoners are confined. Loitering in or about a magistrate's office or any place where prisoners are confined shall be prima facie evidence of soliciting.

Advise or assist the principal for the purpose of forfeiting bond. (1963, c. 1225, s. 20; 1975, c. 619, s. 1.)

§ 85C-21. Receipts for collateral. — When a bail bondsman accepts collateral he shall give a written receipt for same, and this receipt shall give in detail a full description of the collateral received. (1963, c. 1225, s. 21; 1975, c. 619, s. 1.)

§ 85C-22. Persons prohibited from becoming surety or runners. — No sheriff, deputy sheriff, other law-enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of the General Court of Justice, [or] other public employee assigned to duties relating to the administration of criminal justice, may in any case become surety on a bail bond for any person. In addition, no person covered by this section may act as agent for any bonding company or professional bondsman. No such person may have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as bondsmen. Provided, however, nothing herein shall prohibit any person above designated from being surety upon the bond of his or her spouse, parent, brother, sister, child or descendant. (1963, c. 1225, s. 22; 1973, c. 108, s. 39; 1975, c. 619, s. 1.)

§ 85C-23. Bonds not to be signed in blank; authority to countersign only given to licensed employee. — A bail bondsman shall not sign nor countersign in blank bail bonds, nor shall he give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds unless the person so authorized is a licensed bondsman or runner directly employed by the bondsman giving such power of attorney. Copies of all such powers of attorney and revocations of such powers of attorney must be filed immediately with the Commissioner and the clerk of superior court of any county in the State where said bondsman giving the power of attorney is currently writing or is obligated on bail bonds. (1963, c. 1225, s. 23; 1975, c. 619, s. 1.)

§ 85C-24. Insurers to annually report surety bondsmen; notices of appointments and terminations; information confidential. — Every insurer shall annually prior to July 1, furnish the Commissioner a list of all surety bondsmen appointed by it to write bail bonds on its behalf. Every such insurer who subsequently appoints a surety bondsman in the State shall give notice thereof to the Commissioner. All such appointments shall be subject to the issuance of the proper insurance agent's license to the appointee.

An insurer terminating the appointment of a surety bondsman shall file written notice thereof with the Commissioner, together with a statement that it has given or mailed notice to the surety bondsman and to the clerk of superior court of any county in the State wherein such insurer has been obligated on bail bonds through said agent within the past three years. Such notice filed with the Commissioner shall state the reasons, if any, for such termination. Information so furnished the Commissioner shall be privileged and shall not be used as evidence in or basis for any action against the insurer or any of its representatives. (1963, c. 1225, s. 24; 1975, c. 619, s. 1.)

§ 85C-25. Bail bondsman to give notice of discontinuance of business; cancellation of license. — Any bail bondsman who discontinues writing bail bonds during the period for which he is licensed shall notify the clerks of the superior court with whom he is registered and return his license to the Commissioner for cancellation within 30 days after such discontinuance. (1963, c. 1225, s. 25; 1975, c. 619, s. 1.)

§ 85C-26. Persons eligible as runners; bail bondsmen to annually report runners; notices of appointments and terminations; information confidential. — Every person duly licensed as a bail bondsman may appoint as runner any person who has been issued runner's license. Each bail bondsman must, on or before July 1 of each year, furnish to the Commissioner a list of all runners appointed by him. Each such bail bondsman who shall, subsequent to the filing of this list, appoint additional persons as runners shall file written notice with the Commissioner of such appointment.

A bail bondsman terminating the appointment of a runner shall file written notice thereof with the Commissioner, together with a statement that he has given or mailed notice to the runner. Such notice filed with the Commissioner shall state the reasons, if any, for such termination. Information so furnished the Commissioner shall be privileged and shall not be used as evidence in any action against the bail bondsman. (1963, c. 1225, s. 26; 1975, c. 619, s. 1.)

§ 85C-27. Substituting bail by sureties for deposit. — If money or bonds have been deposited, bail by sureties may be substituted therefor at any time before a breach of the undertaking, and the official taking the new bail shall make an order that the money or bonds be refunded to the person depositing the same and they shall be refunded accordingly, and the original undertakings shall be canceled. (1963, c. 1225, s. 27; 1975, c. 619, s. 1.)

§ 85C-28. Deposit for defendant admitted to bail authorizes release and cancellation of undertaking. — When the defendant has been admitted to bail, he, or another in his behalf, may deposit with an official authorized to take bail, a sum of money, or nonregistered bonds of the United States, or of the State, or of any county, city or town within the State, equal in market value to the amount of such bail, together with his personal undertaking, and an undertaking of such other person, if the money or bonds are deposited by another. Upon delivery to the official in whose custody the defendant is of a certificate of such deposit, he shall be discharged from custody in the cause.

When bail other than a deposit of money or bonds has been given, the defendant or the surety may, at any time before a breach of the undertaking, deposit the sum mentioned in the undertaking, and upon such deposit being

made, accompanied by a new undertaking, the original undertaking shall be canceled. (1963, c. 1225, s. 28; 1975, c. 619, s. 1.)

§ 85C-29. Registration of licenses and power of appointments by insurers. — No professional bail bondsman shall become a surety on an undertaking unless he has registered his current license in the office of the clerk of superior court in the county in which he resides and a certified copy of the same with the clerk of superior court in any other county in which he shall write bail bonds.

A surety bondsman shall also annually register a certified copy of his current power of appointment with the clerk of superior court wherein he resides and in any other county wherein he shall write bail bonds on behalf of an insurer. (1963, c. 1225, s. 31; 1975, c. 619, s. 1.)

§ 85C-30. Financial responsibility of professional bondsmen. — Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair market value of at least one eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than five thousand dollars (\$5,000). (1963, c. 1225, s. 29; 1975, c. 619, s. 1.)

§ 85C-31. Securities held in trust by Commissioner; authority to dispose of same. — The securities deposited by a professional bondsman with the Commissioner shall be held in trust for the sole protection and benefit of the holder of bail bonds executed by or on behalf of the undersigned bondsman in this State. A pro rata portion of the securities shall be returned to the bondsman when the Commissioner is satisfied that the deposit of securities is in excess of the amount required to be maintained with him by said bondsman and all the securities shall be returned if the Commissioner is satisfied that the bondsman has satisfied, or satisfactory arrangements have been made to satisfy, the obligations of the bondsman on all his bail bonds written in the State. The Commissioner may sell or transfer any and all of said securities or utilize the proceeds thereof for the purpose of satisfying the liabilities of the professional bondsman on bail bonds given in this State on which he is liable. (1975, c. 619, s. 1.)

§ 85C-32. Bondsman to furnish power of attorney with securities. — With the securities deposited with the Commissioner, the professional bondsman shall at the same time deliver to the Commissioner of Insurance a power of attorney, on a form supplied by the Commissioner, executed and acknowledged by the professional bondsman authorizing the sale or transfer of said securities or any part thereof. The power of attorney shall read as follows:

POWER OF ATTORNEY

AUTHORIZING THE COMMISSIONER OF INSURANCE TO SELL, OR TRANSFER SECURITIES DEPOSITED BY PROFESSIONAL BONDSMEN IN NORTH CAROLINA.

KNOW ALL MEN BY THESE PRESENTS, That, a professional bondsman, located in the County of, in the State of, has authorized and appointed for himself, his successors, heirs and assigns, the Commissioner of Insurance of the State of North Carolina, in the name and in behalf of said professional bondsman, his true and lawful attorney to sell or transfer any securities deposited or that may be deposited, by said professional bondsman with said Commissioner, under the

laws and regulations requiring a deposit of securities to be made by professional bondsmen doing business in the State of North Carolina, insofar as the sale or transfer is deemed necessary by the Commissioner of Insurance to pay any liability arising under a bond which purports to be given by the undersigned bondsman in any county in this State and execution has been issued against said bondsman pursuant to a judgment on the bond and the same has not been satisfied. The securities so deposited are to be held in trust by the Commissioner for the sole protection and benefit of the holder of bail bonds executed by, or on behalf of, the undersigned bondsman. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this day of
, 19

Professional Bondsman

Before me, a Notary Public in and for the State of personally appeared, a professional bondsman who acknowledged that he executed the foregoing power of attorney.

WITNESS my hand and Notarial Seal, this day of, 19

Notary Public

My Commission Expires:
 (1975, c. 619, s. 1.)

§ 85C-33. Security deposit to be maintained. — Any professional bondsman, whose security deposits with the Commissioner are, for any reason, reduced in value below the requirements of this Chapter, shall immediately upon receipt of a notice of deficiency from the Commissioner of Insurance deposit such additional securities as are necessary to comply with the law. No professional bondsman shall sign, endorse, execute or become surety on any additional bail bonds, or pledge or deposit any cash, check, or other security of any nature in lieu of a bail bond in any county in North Carolina until such time as he has made such additional deposit of securities as shall be required by the notice of deficiency. (1975, c. 619, s. 1.)

§ 85C-34. Monthly report required. — Each professional bail bondsman shall file with the Commissioner of Insurance a written report in form prescribed by the Commissioner regarding all bail bonds on which he is liable as of the first day of each month showing (i) each individual bonded, (ii) the date such bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance. Such report shall be filed on or before the fifteenth day of each month. Within the same time, a copy of this written report must also be filed with the clerk of superior court in any county in which he is obligated on bail bonds. (1975, c. 619, s. 1.)

§ 85C-35. Examinations. — Whenever the Commissioner deems it prudent he shall visit and examine or cause to be visited and examined by some competent person appointed by him for that purpose any professional bail bondsman subject to the provisions of this Chapter. For this purpose the Commissioner or person making the examination shall have free access to all books and papers of the bondsman that relate to his business and to the books and papers kept by any of his agents or runners. (1975, c. 619, s. 1.)

§ 85C-36. Limit on principal amount of bond to be written by professional bondsman. — No professional bondsman shall act as surety on any bail bond whose principal sum is in excess of one fourth of the value of the securities deposited with the Commissioner at that time. (1975, c. 619, s. 1.)

§ 85C-37. Disposition of fees. — Fees collected by the Commissioner pursuant to this Chapter shall be paid into the general fund of the State. (1963, c. 1225, s. 32; 1975, c. 619, s. 1.)

§ 85C-38. Penalties for violations. — Any person, firm, association or corporation violating any of the provisions of this Chapter shall upon conviction for each offense be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. (1963, c. 1225, s. 33; 1975, c. 619, s. 1.)

§ 85C-39. Duplication of regulation forbidden. — No county, city or town in this State shall license or levy a license tax on bail bondsmen nor require such bondsmen to deposit collateral security as a condition for continuing to write bail bonds. (1975, c. 619, s. 1.)

§ 85C-40. Conflicting laws. — Section 41.1 of Chapter 105 of the General Statutes of North Carolina and all laws and clauses of laws in conflict with the provisions of the Chapter are hereby repealed. Provided, however, that in the event of any conflict between the provisions of this Chapter and those of Chapter 15A of the General Statutes of North Carolina, the provisions of Chapter 15A shall control and continue in full force and effect. (1975, c. 619, s. 2.)

§ 85C-41. Application of Chapter. — This Chapter shall not apply to Robeson County or New Hanover County. (1975, c. 619, s. 3.)

Chapter 86.

Barbers.

Sec.

86-5. Period of apprenticeship; affidavit; qualifications for certificate as registered barber.

§ 86-5. Period of apprenticeship; affidavit; qualifications for certificate as registered barber. — Any person, to practice barbering as a registered barber, must have worked as a registered apprentice for a period of at least 12 months under the direct supervision of a registered barber, and this fact must be demonstrated to the Board of Barber Examiners by the sworn affidavit of three registered barbers, or such other methods of proof as the Board may prescribe and deem necessary. A certificate of registration as a registered barber shall be issued by the Board hereinafter designated, to any person who is qualified under the provisions of this Chapter, or meets the following qualifications:

- (1) Who is qualified under the provisions of G.S. 86-3;
- (2) Who is at least 18 years of age;
- (3) Who passes a satisfactory physical examination as prescribed by said Board;
- (4) Who has practiced as a registered apprentice for a period of 12 months, under the immediate personal supervision of a registered barber; and
- (5) Who has passed a satisfactory examination, conducted by the Board, to determine his fitness to practice barbering, such examination to be so prepared and conducted as to determine whether or not the applicant is possessed of the requisite skill in such trade to properly perform all the duties thereof, including the ability of the applicant in his preparation of tools, shaving, haircutting, and all the duties and services incident thereto, and has sufficient knowledge concerning diseases of the face, skin and scalp to avoid the aggravation and spreading thereof in the practice of said trade. (1929, c. 119, s. 5; 1975, c. 68, ss. 1, 2.)

Editor's Note. — The 1975 amendment substituted "12 months" for "18 months" in the introductory language and in subdivision (4) and

substituted "18 years of age" for "19 years of age" in subdivision (2).

§ 86-21. Refusal, revocation or suspension of certificates or permits.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 86-25. Licensing and regulating barber schools and colleges.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 87.**Contractors.****Article 1.****General Contractors.**

Sec.

- 87-1. "General contractor" defined; exemptions.
- 87-10. Application for license; examination; certificate; renewal.
- 87-12. Certificate evidence of license.

Article 4.**Electrical Contractors.**

Sec.

- 87-43.3. Classification of licenses.

Article 7.**North Carolina Well Construction Act.**

- 87-95. Injunctive relief.

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, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars (\$30,000) 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) 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; 1975, c. 279, s. 1.)

Editor's Note. — The 1975 amendment substituted "public utilities" for "sewer main" near the middle of the first paragraph.

§ 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, 30 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 four hundred twenty-five thousand dollars (\$425,000), 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 one hundred twenty-five thousand dollars (\$125,000) 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[A] 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 contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:
 - a. Water and sewer mains and water service lines and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations;
 - b. Water and wastewater treatment facilities and appurtenances thereto;
 - c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the customer;
 - d. Public communication distribution facilities; and
 - e. Natural gas and other petroleum products distribution facilities;

provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor qualifies, 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.

Public utilities contractors constructing water service lines and house and building sewer lines as provided in (3)a above shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected.

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; c. 1041, s. 3; 1971, c. 246, s. 3; 1973, c. 1036, ss. 1, 2; c. 1331, s. 3; 1975, c. 279, ss. 2, 3.)

Editor's Note. —

The 1975 amendment added to subdivision (3) of the second paragraph all of the language following "Public utilities contractors" at the beginning of the subdivision and preceding "and" at the end of the subdivision. The

amendment also added the third paragraph of the section.

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

§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 87-12. Certificate evidence of license. — The issuance of a certificate of license or limited license by this Board shall be evidence that the person, firm, or corporation named therein is entitled to all the rights and privileges of a licensed or limited licensed general contractor while said license remains unrevoked or unexpired. A licensed general contractor holding a license which qualifies him for work as described in G.S. 87-10 shall be authorized to perform the said work without any additional occupational license, notwithstanding the provisions of any other occupational licensing statute. A license issued by any other occupational licensing board having jurisdiction over any work described in G.S. 87-10 shall qualify such licensee to perform the work for which the license qualifies him without obtaining the license from the General Contractors Licensing Board. Nothing contained herein shall operate to relieve any general contractor from the necessity of compliance with other provisions of the law requiring building permits and construction in accordance with appropriate provisions of the North Carolina State Building Code. (1925, c. 318, s. 11; 1937, c. 429, s. 5; 1975, c. 279, s. 4.)

Editor's Note. — The 1975 amendment added all of the section following the first sentence.

ARTICLE 2.

*Plumbing and Heating Contractors.***§ 87-23. Revocation or suspension of license for cause.****Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 3.

*Tile Contractors.***§ 87-35. Power of Board to revoke or suspend licenses; charges; procedure.****Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 4.

Electrical Contractors.

§ 87-43.3. Classification of licenses. — An electrical contractor's license shall be issued in one of the following classifications: *Limited*, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of ten thousand dollars (\$10,000) 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); *Unlimited*, under which a licensee shall be permitted to engage in any electrical contracting project regardless of value; and such other special *Restricted* classification as the Board may establish from time to time to provide for the licensing of persons, firms or corporations wishing to engage in special restricted electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited nature; and for the licensing of persons, firms or corporations wishing to engage in electrical contracting work as an incidental part of their primary business, which is a lawful business other than electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited nature directly in connection with said primary business. 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; 1973, c. 1228, s. 1; 1975, c. 29.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, increased the maximum project value for a "Limited" license from \$5,000 to \$10,000.

§ 87-47. Jurisdiction of Board over licensees.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 5.

*Refrigeration Contractors.***§ 87-59. Revocation or suspension of license for cause.****Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 6.

*Water Well Contractors.***§ 87-80. Procedure when Board refuses to examine applicant or revokes or suspends certificate.****Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 7.

North Carolina Well Construction Act.

§ 87-95. Injunctive relief. — Upon violation of any of the provisions of or any order issued pursuant to this Article, or duly adopted regulation of the Commission implementing the provisions of this Article, the Secretary of the Department of Natural and Economic Resources may, either before or after the institution of proceedings for the collection of the penalty imposed by this Article for such violations, request the Attorney General to institute a civil action in the superior court in the name of the State upon the relation of the Department of Natural and Economic Resources for injunctive relief to restrain the violation or require corrective action, 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; 1973, c. 1262, s. 23; 1975, c. 842, s. 1.)

Editor's Note. —

The 1975 amendment rewrote this section.

Chapter 88.

Cosmetic Art.

Sec.	Sec.
88-1. Practice of cosmetology regulated; permits for operation of cosmetic art shops.	88-17. Regular and special meetings of Board; examinations.
88-13. State Board of Cosmetic Art Examiners created; appointment and qualifications of members; term of office; removal for cause.	88-21. Fees required.
88-14. Office in Raleigh; seal; officers and secretary.	88-23. Rules and regulations of Board; inspections; granting of certificates to Board members; employment of former Board members.
88-15. Compensation and expenses of Board members; inspectors; reports; budget; audit.	88-25. Annual renewal of certificates and permits.
	88-28. Acts made misdemeanors.
	88-28.1. Restraining orders against persons engaging in illegal practices.

§ 88-1. Practice of cosmetology regulated; permits for operation of cosmetic art shops. — On and after June 30, 1933, no person or combination of persons shall, for pay or reward, either directly or indirectly, practice or attempt to practice cosmetic art as hereinafter defined in the State of North Carolina without a certificate of registration, either as a registered apprentice or as a registered "cosmetologist," issued pursuant to the provisions of this Chapter by the State Board of Cosmetic Art Examiners hereinafter established.

The operator of a cosmetic art shop, beauty parlor or hairdressing establishment may employ unlicensed personnel to do shampooing only, where the shampooing is done under the supervision of a registered cosmetologist. As used in this paragraph, "shampooing" includes only the application of shampoo to hair and the removal of the shampoo from the hair, and does not include any arranging, dressing, waving, marcelling or other treatment of hair. This paragraph does not apply to barbershops. This paragraph shall not apply to the following counties: Cumberland, Duplin, Durham, Forsyth, Guilford, Jones, Lenoir, Mecklenburg, Onslow, Richmond, Sampson, Scotland, Stanly and Union.

On and after February 1, 1976, any person, firm or corporation, before establishing or opening a cosmetic art shop not heretofore licensed by the State Board of Cosmetic Art, shall make application to the Board, on forms to be furnished by the Board, for a permit to operate a cosmetic art shop. The shop of such applicant shall be inspected and approved by the State Board of Cosmetic Art by an agent designated for such purpose by the Board before such cosmetic art shop shall be opened for business. It shall be unlawful to open a new cosmetic art shop for the practice of cosmetology until such shop has been inspected, as heretofore required, and determined by the Board to be in compliance with the requirements set forth in this Chapter. Upon the determination by the Board that the applicant has complied with the requirements of this Chapter, the Board shall issue to such applicant a permit to operate a cosmetic art shop. A fee of twenty-five dollars (\$25.00) shall be paid to the Board for the inspection of a cosmetic art shop. Such fee must accompany the application for a permit to operate a cosmetic art shop at the time such application is filed with the Board.

All cosmetic art shops in operation as of February 1, 1976, shall be required to make application to the Board of Cosmetic Art, on forms supplied by the Board, for a permit to operate. The fee required for such permit shall be three dollars (\$3.00) per active booth in said shop.

Thereafter, all permits shall be renewed as of the first day of February of each and every year, and the fee for annual renewal of cosmetic art shop permits shall be as set forth in G.S. 88-21. No permit or certificate shall be transferable. Each cosmetic art shop permit shall be conspicuously posted within such

cosmetic art shop for which same is issued. (1933, c. 179, s. 1; 1973, c. 1481, ss. 1, 2; 1975, c. 7; c. 857, s. 1.)

Editor's Note. —

The first 1975 amendment deleted Halifax and Martin from the list of counties in the fourth sentence of the second paragraph.

The second 1975 amendment, effective July 1, 1975, added the last three paragraphs.

§ 88-12. Qualifications for registered cosmetologists.

Cited in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

§ 88-13. State Board of Cosmetic Art Examiners created; appointment and qualifications of members; term of office; removal for cause. — A board to be known as the State Board of Cosmetic Art Examiners is hereby established, to consist of three members appointed by the Governor of the State. Each member shall be an experienced cosmetologist, who has followed the practice of all branches of the cosmetic art in the State of North Carolina for at least five years next preceding his or her appointment, and who, during such period of time, and at the time of appointment, shall be free of connection in any manner with any cosmetic art school or college or academy or training school. Certification is required of each person prior to his appointment to the Board.

On July 1, 1977, the Governor shall appoint three members for a term of three years. Thereafter, as the term of any member expires, their successor shall be appointed for a term of three years and shall serve until their successor is appointed and qualified. The Governor, at his option, may remove any member for good cause shown and appoint members to fill unexpired terms. (1933, c. 179, s. 13; 1935, c. 54, s. 2; 1973, c. 1360, s. 1; 1975, c. 857, s. 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "three" for "five" in the first sentence and added the last sentence in the first paragraph and substituted the present first sentence of the second paragraph for the former first sentence of that paragraph, which provided

for staggered terms for the former five-member Board. The amendment also added to the second paragraph a new second sentence, which has not been added to the section as set out above because it duplicated the last sentence of the section.

§ 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. The Board shall operate under its present structure and composure until July 1, 1977, and thereafter 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; 1975, c. 857, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added "The Board shall operate under its present structure and composure until July 1, 1977, and thereafter" at the beginning of the second sentence.

§ 88-15. Compensation and expenses of Board members; inspectors; reports; budget; audit. — Each member of the Board of Cosmetic Art Examiners shall receive compensation for his services and expenses as provided in G.S. 93B-5 but shall be limited to payment for services deemed to be official business of the Board. Official business of the Board deemed to be official business of the Board shall include meetings called by the chairman, supervision or administering of examinations, or investigations or inspections made subject to the regulations cited in the following paragraph. No Board member shall be authorized to attend trade shows or to travel out of the State and no per diem or travel expenses shall be paid for such travel unless said Board member is an officer of the organization holding such meeting.

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. No member of the Board shall exercise this authority on a routine basis but shall do so at the direction of either the Board, the chairman, the executive secretary or the inspector assigned to the territory, such direction to be governed by a complaint or problem registered with the Board of Cosmetic Art office or when an inspector deems it necessary to call in a Board member. Reimbursement for per diem and travel is subject to these provisions. Prior to reimbursement, the requesting Board member must submit a detailed written report to the Board of Cosmetic Art office for the official file. 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 1 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; 1973, c. 1360, s. 2; 1975, c. 857, s. 4.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote the first paragraph and added the fifth,

sixth and seventh sentences of the second paragraph.

§ 88-17. Regular and special meetings of Board; examinations. — The Board of Cosmetic Art Examiners shall meet four times a year in the months of January, April, July and October on the first Tuesday in each of said months, for the purpose of transacting all business of the Board of Cosmetic Art Examiners and to conduct examinations of applicants for certificates of registration to practice as registered cosmetologists, and of applicants for certificates of registration to practice as registered apprentices, meetings to be held at such places as the Board may determine to be most convenient for such examinations; provided, however, that examinations are conducted at no less than three locations other than Raleigh, scattered geographically throughout the State of North Carolina, and the locations for examinations conducted outside of Raleigh shall be in publicly supported two-year post-secondary educational institutions with appropriate facilities. The examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall be open to all applicants, and shall include such practical demonstration and oral and written tests as the said Board may determine and the examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall be administered by teachers or instructors qualified and approved by the Board of Cosmetic Art Examiners. Examinations held in post-secondary educational institutions shall be supervised by not more than one member of the Board of Cosmetic Art and shall be administered by teachers or instructors, other than Board members, who are qualified and approved by the Board. Examinations held in Raleigh shall be administered by the minimum number of Board members required to conduct such examinations and the chairman of the Board is authorized and empowered to make the decision, based on the number of applicants scheduled for examination, and to appoint such Board members to conduct the scheduled examinations. The chairman of the Board is hereby authorized and empowered to call a meeting of said Board whenever necessary, said meetings to be in addition to the quarterly meetings hereinbefore provided for. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chairman of the Board. (1933, c. 179, s. 17; 1935, c. 54, s. 4; 1973, c. 1360, ss. 3, 4; 1975, c. 857, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted "provided that such examinations are made under the supervision of a member of the Board of Cosmetic Art Examiners" at the end of

the second sentence, deleted the former third sentence, which empowered the chairman to call additional meetings, and added the last four sentences.

§ 88-21. Fees required. — The fee to be paid by an applicant for a certificate of registration to practice cosmetic art as an apprentice shall be five dollars (\$5.00). The fee to be paid by an applicant for examination to determine his or her fitness to receive a certificate of registration as a registered cosmetologist shall be ten dollars (\$10.00). The regular or annual license fee of a registered cosmetologist shall be eight dollars (\$8.00), and the renewal of the license of a registered cosmetologist shall be eight dollars (\$8.00) if renewed before the same becomes delinquent, and if renewed after the same becomes delinquent there shall be charged a penalty of three dollars (\$3.00) in addition to the regular license fee of eight dollars (\$8.00); the annual license fee of a registered apprentice shall be four dollars (\$4.00), and all licenses, both for apprentices and for registered cosmetologists, shall be renewed as of the first day of October each and every year. All cosmetic art shops in operation shall pay an annual fee of three dollars (\$3.00) for each active booth on or before February 1, if paid before it becomes delinquent, and if renewed after the same becomes delinquent, there shall be charged a penalty of ten dollars (\$10.00) in addition to the regular permit fee. The fee for registration of an expired permit of a cosmetic art shop shall be twenty-five dollars (\$25.00). All cosmetic art schools shall pay a fee of fifty dollars (\$50.00) annually. The fees herein set out shall not be increased by the Board of Cosmetic Art Examiners, but said Board may regulate the payment of said fees and prorate the license fees in such manner as it deems expedient. The fee for registration of an expired certificate for a registered cosmetologist shall be five dollars (\$5.00) and registration of an expired certificate of an apprentice shall be three dollars (\$3.00). (1933, c. 179, s. 21; 1955, c. 1265; 1973, c. 256, s. 2; 1975, c. 857, s. 6.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added the fourth and fifth sentences.

§ 88-23. Rules and regulations of Board; inspections; granting of certificates to Board members; employment of former Board members. — The State Board of Cosmetic Art Examiners shall have authority to make reasonable rules and regulations for the sanitary management of cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies and training schools, hereinafter called shops and schools, and to have such rules and regulations enforced. The duly authorized agents of said Board shall have authority to enter upon and inspect any shop or school at any time during business hours. A copy of the rules and regulations adopted by said Board and approved by the Commission for Health Services shall be furnished from the office of the Board or by the above-mentioned authorized agents to the owner or manager of each shop or school in the State, and such copy shall be kept posted in a conspicuous place in each shop and school.

The Board of Cosmetic Art shall not hereafter be authorized to grant teacher's or instructor's certificates to Board members during their term of appointment on said Board. Teacher's or instructor's certificates granted to members by official action of the Board, without prior examination, shall be rescinded upon such member's termination from the Board of Cosmetic Art.

Any person appointed to the Board of Cosmetic Art shall be prohibited from being employed by the Board for a period of one year after that person's term of appointment expires, whether or not that person served his whole term. (1933, c. 179, s. 23; 1935, c. 54, s. 5; 1973, c. 476, s. 128; 1975, c. 857, s. 9.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added the second and third paragraphs.

§ 88-25. Annual renewal of certificates and permits. — Every registered cosmetologist and every registered apprentice, who continues in active practice or service shall annually, on or before October 1 of each year, renew his, or her certificate of registration which has not been renewed prior to, or during the month of October in any year, and which shall expire on the first day of November in that year. A registered cosmetologist, or a registered apprentice whose certificate of registration has expired may have his or her certificate restored immediately upon payment of the required restoration fee. Any registered cosmetologist who retires from the practice of cosmetic art for not more than three years may renew his or her certificate of registration upon payment of the required restoration fee, and by paying the license fee for the years that such license fees have not been paid.

Every cosmetic art shop, which continues to operate, shall annually, on or before February 1 of each year, renew its permit to operate, and any permit that has not been renewed before or during the month of February in any year shall expire on the first day of March in that year. A cosmetic art shop whose permit has expired may have its permit restored immediately upon payment of restoration fee, as required in G.S. 88-21, in addition to the renewal fee. (1933, c. 179, s. 25; 1957, c. 1184, s. 4; 1973, c. 256, s. 3; c. 450, s. 3; 1975, c. 857, s. 7.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added the second paragraph.

§ 88-27. Procedure for refusal, suspension or revocation of certificate.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 88-28. Acts made misdemeanors. — Each of the following constitutes a misdemeanor punishable upon conviction by a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100.00), or up to 30 days in jail, or both:

- (1) The violation of any of the provisions of G.S. 88-1.
- (2) Permitting any person in one's employ, supervision, or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.
- (3) Permitting any person in one's employ, supervision, or control, to practice as a cosmetologist unless that person has a certificate as a registered cosmetologist.
- (4) Obtaining, or attempting to obtain, a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.
- (5) Practicing or attempting to practice by fraudulent misrepresentations.
- (6) The willful failure to display a certificate of registration as required by G.S. 88-24.
- (7) The willful violation of the reasonable rules and regulations adopted by the State Board of Cosmetic Art Examiners and approved by the Commission for Health Services. (1933, c. 179, s. 28; 1949, c. 505, s. 2; 1973, c. 476, s. 128; 1975, c. 857, s. 8.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, increased the minimum fine from \$10.00 to \$25.00 and the maximum from \$50.00 to \$100.00

and substituted "or up to 30 days in jail, or both" for "or imprisonment for not less than 10 days, or more than 30 days" in the introductory paragraph.

§ 88-28.1. Restraining orders against persons engaging in illegal practices.

— The Department of Human Resources and/or any county, city or district health officer and/or the State Board of Cosmetic Art Examiners, if it shall be found that any licensed cosmetologist, cosmetic art shop, or other person, who is subject to the provisions of this Chapter, is violating any of the rules and regulations adopted by the State Board of Cosmetic Art Examiners, as approved by the Commission for Health Services, or any provisions of Chapter 88, section 28, of the General Statutes of North Carolina [G.S. 88-28], may, after notice to such person of such violation, apply to the superior court for a temporary or permanent restraining order to restrain such person from continuing such illegal practices. If, upon such application, it shall appear to the court that such person has violated and/or is violating any of the said rules and regulations or any provisions of Chapter 88, section 28, of the General Statutes of North Carolina [G.S. 88-28], the court may issue an order restraining any further violations thereof. All such actions for injunctive relief shall be governed by the provisions of Article 37 of Chapter 1 of the General Statutes: Provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under any of the provisions of this Chapter. (1949, c. 505, s. 1; 1973, c. 476, s. 128; 1975, c. 857, s. 10.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, inserted "cosmetic art shop" near the beginning of the first sentence.

Chapter 89.

Engineering and Land Surveying.

§§ 89-1 to 89-16: Recodified as §§ 89C-1 to 89C-28.

Editor's Note. — This Chapter was rewritten by Session Laws 1975, c. 681, s. 1, and has been recodified as Chapter 89C.

Former § 89-8 was amended by Session Laws 1975, c. 19, s. 23, which corrected technical errors in the first 1973 amendatory act.

Chapter 89A.

Landscape Architects.

§ 89A-7. Refusal, revocation or suspension of certificate.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 89A-8. Violation a misdemeanor; injunction to prevent violation.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 89B.**Foresters.**

Sec.	Sec.
89B-1. General provisions.	89B-7. Receipts and disbursements.
89B-2. Definitions.	89B-8. Records and reports.
89B-3. State Board of Registration for Foresters; appointment of members; terms.	89B-9. General requirements for registration.
89B-4. Compensation and expenses of Board members.	89B-10. Application and registration fees.
89B-5. Organization and meetings of the Board.	89B-11. Expiration and renewals.
89B-6. Powers of the Board.	89B-12. Examinations.
	89B-13. Revocations and reissuance of registration.
	89B-14. Roster of registered foresters.
	89B-15. Violation and penalties.

Editor's Note. — Session Laws 1975, c. 531, s. 16, makes this Chapter effective July 1, 1975.

§ 89B-1. General provisions. — (a) No person shall, in connection with his name or otherwise, assume, use or advertise any title or description tending to convey, directly or indirectly, the impression that he is a registered forester without first having been registered as a registered forester as hereinafter provided.

(b) It is the intention of this Chapter to benefit and protect the public by improving the standards relative to the practice of professional forestry in North Carolina. (1975, c. 531, s. 1.)

§ 89B-2. Definitions. — As used in this Chapter:

- (1) "Board" shall mean the State Board of Registration for Foresters, provided for by this Chapter.
- (2) "Forester" means a person who by reason of his special knowledge and training in natural sciences, mathematics, silviculture, forest protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of forestry as hereinafter defined.
- (3) "Practicing" means giving professional forestry services, including but not limited to, consultation, investigation, evaluation, education, planning, or responsible supervision of any forestry activities requiring knowledge, and training in and experience of forestry principles and techniques.
- (4) "Registered forester" means a person who has been registered pursuant to this Chapter. (1975, c. 531, s. 2.)

§ 89B-3. State Board of Registration for Foresters; appointment of members; terms. — (a) A State Board of Registration for Foresters is hereby created whose duty it shall be to administer the provisions of this Chapter. The Board shall consist of four duly practicing registered foresters and one at-large member, who shall be appointed by the Governor for a term of five years. In the initial appointments of foresters, the Governor shall appoint four practicing foresters, at least three of whom shall hold at least a bachelor's degree from an accredited forestry school. The appointments shall have the effect of duly registering the appointees who are practicing foresters. The initial Board shall be appointed for terms of one, two, three, four, and five years respectively

beginning July 1, 1975. The members of the Board shall serve for the terms hereinbefore specified and until their successors are duly appointed and qualified. Upon the expiration of the term of any forester Board member, the Governor shall appoint as his successor a practicing registered forester. Upon the expiration of the term of the at-large member, the Governor shall appoint an at-large successor.

(b) Each member of the Board shall be a citizen of the United States and a resident of North Carolina.

(c) Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term.

(d) The Board shall elect annually the following officers: a chairman, and a vice-chairman, who shall be members of the Board, and a secretary who may be a member of the Board. A quorum of the Board shall consist of not less than three voting members of the Board. (1975, c. 531, s. 3.)

§ 89B-4. Compensation and expenses of Board members. — Each member of the Board shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. (1975, c. 531, s. 4.)

§ 89B-5. Organization and meetings of the Board. — The Board shall meet on call of the Governor within 30 days after its initial members are appointed, and thereafter shall hold at least two regular meetings each year. Special meetings may be held at such time and place as the bylaws of the Board may provide. (1975, c. 531, s. 5.)

§ 89B-6. Powers of the Board. — The Board may make all reasonable and necessary rules for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board. (1975, c. 531, s. 6.)

§ 89B-7. Receipts and disbursements. — The secretary of the Board shall receive and account for all moneys derived under the provision of this Chapter, and shall keep such moneys in a separate fund to be known as the "Registered Foresters' Fund." Moneys in the aforesaid fund shall be expended to carry out the purposes of the Board. The secretary of the Board shall give surety bond to the Board in such sum as the Board may determine, the premium of which shall be regarded as a proper expense of the Board and shall be paid from the Registered Foresters' Fund.

The Board may employ and fix the compensation of necessary clerical and other assistants. The compensation of such assistants shall be paid out of the Registered Foresters' Fund. (1975, c. 531, s. 7.)

§ 89B-8. Records and reports. — The Board shall keep a record of its proceedings and a register of all applications for registration. The register shall show the name, age and residence of each applicant; the date of the application; applicant's place of business; his educational and other qualifications; whether or not examination was required; whether application was rejected or registration was granted; date of action by the Board; and other information as may be deemed necessary by the Board. Annually on July 1 the Board shall submit to the Governor a report of its transactions of the preceding year. (1975, c. 531, s. 8.)

§ 89B-9. General requirements for registration. — (a) Applicants for registration shall be registered upon satisfactory showing to the Board that the applicant:

- (1) Is of good moral character, and
- (2) Has either:

- a. Graduated with a bachelor's or higher degree in a forestry curriculum from a school or college of forestry approved by the Board and has had two or more years' experience in forestry; or
- b. Passed a written examination designed to show knowledge approximating that obtained through graduation from a four-year curriculum in forestry in a university or college approved by the Board, and has a record of five or more years of active practice in forestry work of a character satisfactory to the Board; provided that five or more years shall be immediately prior to the application; or
- c. Is a resident of North Carolina and has engaged in the practice of forestry for five years immediately prior to July 1, 1975, and has held himself out in writing and has been employed as a practicing forester for that period. Such person shall make written application under oath of the Board to be registered on or before June 30, 1976, and thereafter no person shall be registered under this subparagraph.

(b) Registration shall be determined upon the basis of individual personal qualification. No firm, company, partnership, corporation or public agency shall be registered as a registered forester.

(c) A nonresident of North Carolina may become a registered forester under this Chapter by complying with its terms, and by filing a consent as to service of process and pleadings upon the Board secretary. In connection with the practice of forestry by such nonresident in North Carolina, the consent as to service of process and pleadings shall be held binding and valid in all courts, as if due service had been made personally upon said nonresident by the Board, when such process has been served upon the Board secretary.

(d) A person not a resident of North Carolina, or one who has recently become a resident thereof, may become registered under this Chapter upon written application to the Board, provided: (i) Such person is legally registered as a registered forester in his own state or country and has submitted evidence to the Board that he is so registered; and (ii) the state or country in which he is so registered observes these same rules of reciprocity in regard to persons registered under the provisions of this Chapter.

(e) A nonresident of North Carolina may use the term "registered forester" in North Carolina without becoming registered under this Chapter provided that he is registered in another state which will reciprocate with the provision of this Chapter. (1975, c. 531, s. 9.)

§ 89B-10. Application and registration fees. — Applications for registration shall be made on forms prescribed and furnished by the Board. The application fee for a certificate of registration as a registered forester shall be fifteen dollars (\$15.00), which shall accompany the application. An additional fifteen dollars (\$15.00) shall be paid upon issuance of the certificate of registration. Should the applicant fail or refuse to remit the certificate fee within 30 days after being notified in the usual manner that the applicant has successfully qualified, he forfeits the right to have the certificate so issued and said applicant may be required again to submit an original application fee therefor. Should the Board deny the issuance of a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the Board. (1975, c. 531, s. 10.)

§ 89B-11. Expiration and renewals. — Registrations shall expire on the last day of June following issuance or renewal and shall become invalid after that date unless renewed. It shall be the duty of the secretary of the Board to notify, at his last registered address, every person registered under this Chapter of the date of the expiration of his registration and the amount of fee which shall be

required for its renewal for one year. Such notices shall be mailed at least 30 days in advance of the expiration date of such registrations. The annual renewal fee for certificates shall be ten dollars (\$10.00). The fee for issuance of replacement certificates of registration shall be five dollars (\$5.00).

Any registration which has expired may be renewed by paying a fee of ten dollars (\$10.00) plus one dollar (\$1.00) per calendar month from the date of expiration. Charges above the renewal fee shall not exceed twenty dollars (\$20.00). (1975, c. 531, s. 11.)

§ 89B-12. Examinations. — When written examinations are required, they shall be held at such time and places in the State of North Carolina as the Board shall determine. The methods of procedure will be described by the Board. A candidate failing an examination may apply for reexamination at the expiration of six months and will be reexamined with payment of an additional fee of fifteen dollars (\$15.00). Subsequent examinations will be granted upon payment of a fee of fifteen dollars (\$15.00) for each examination. (1975, c. 531, s. 12.)

§ 89B-13. Revocations and reissuance of registration. — The Board shall have the power to revoke or suspend the certificate of registration of any registrant who is found, by the Board, to be guilty of gross negligence, fraud, deceit or flagrant misconduct in the practice of forestry, or who is found by the Board to have demonstrated incompetence as a practicing forester. The Board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct in connection with any forestry practice against any registrant that may come to its attention.

Any person may prefer charges against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the Board. The time and place for a hearing before the Board shall be fixed by the Board. At any hearing the accused may appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended. (1975, c. 531, s. 13.)

§ 89B-14. Roster of registered foresters. — A roster showing the names, registration numbers, and places of business residence of all registered foresters qualified according to the provisions of this Chapter shall be prepared by the secretary of the Board during the month of July of each year. Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each registrant, and copies may be furnished to the public upon request and upon payment of a fee to be set by the Board. (1975, c. 531, s. 14.)

§ 89B-15. Violation and penalties. — Any person who, without being registered in accordance with the provisions of this Chapter, shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester; or any person who shall give any false or forged information of any kind to the Board or to any member thereof in obtaining a certificate of registration; or any person, firm, partnership or corporation who shall violate any of the provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars (\$50.00), or imprisoned not more than 30 days. (1975, c. 531, s. 15.)

Chapter 89C.

Engineering and Land Surveying.

Sec.	Sec.
89C-1. Short title.	89C-17. Expirations and renewals of certificates.
89C-2. Declarations; prohibitions.	89C-18. Reissuance of certificates.
89C-3. Definitions.	89C-19. Public works; requirements where public safety involved.
89C-4. State Board of Registration; appointments; terms.	89C-20. Rules of professional conduct.
89C-5. Board members; qualifications.	89C-21. Disciplinary action — reexamination, revocation, suspension, reprimand, or fine.
89C-6. Compensation and expenses of Board members.	89C-22. Disciplinary action — charges; procedure.
89C-7. Vacancies; removal of member.	89C-23. Unlawful to practice engineering or land surveying without registration; unlawful use of title or terms; penalties; Attorney General to be legal adviser.
89C-8. Organization of the Board; meetings; election of officers.	89C-24. Corporate or partnership practice of engineering or land surveying.
89C-9. Executive secretary; duties and liabilities.	89C-25. Limitations on application of Chapter.
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89C-11. Secretary; duties and liabilities; expenditures.	89C-27. Invalid sections; severability.
89C-12. Records and reports of Board; evidence.	89C-28. Existing registration not affected.
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89C-15. Examinations.	
89C-16. Certificates of registration; effect; seals.	

Editor's Note. — This Chapter is Chapter 89 as rewritten by Session Laws 1975, c. 681, s. 1, and recodified. Where appropriate, the historical citations to the sections in the former Chapter have been added to corresponding sections in the new Chapter.

Session Laws 1975, c. 681, s. 2, provides: "All laws and clauses of law in conflict with this act are repealed. Nothing herein, however, shall be construed to repeal any of the provisions of Chapters 150, 150A or 93B of the General Statutes."

§ 89C-1. Short title. — This Chapter shall be known and may be cited as "The North Carolina Engineering and Land Surveying Act." (1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

§ 89C-2. Declarations; prohibitions. — In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with his name or otherwise assume or advertise any title or description tending to convey the impression that he is either a professional engineer or a registered land surveyor, unless such person has been duly registered as such. The right to engage in the practice of engineering or land surveying shall be deemed a personal right, based on the qualifications of the individual as evidenced by his certificate of registration, which shall not be transferable. (1921, c. 1, s. 1; C. S., s. 6055(b); 1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

§ 89C-3. Definitions. — When used in this Chapter, unless the context otherwise requires:

- (1) "Board" shall mean the North Carolina State Board of Registration for Professional Engineers and Land Surveyors provided for by this Chapter.
- (2) "Engineer". — The term "engineer," within the intent of this Chapter, shall mean a person who, by reason of his special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.
- (3) "Engineer-in-Training". — The term "engineer-in-training," as used in this Chapter, shall mean a person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.
- (4) "Land Surveyor-in-Training". — The term "land surveyor-in-training," as used in this Chapter, shall mean a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.
- (5) "Person" means any natural person, firm, partnership, corporation or other legal entity.
- (6) "Practice of Engineering". —
 - a. The term, "practice of engineering," within the intent of this Chapter, shall mean any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer or that he is registered under this Chapter; or who holds himself out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.
 - b. The term "practice of engineering" shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance.
- (7) "Practice of land surveying" by registered land surveyors shall mean any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of

law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.

- a. The term "practice of land surveying" shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.
- (8) "Professional Engineer". — The term, "professional engineer," as used in this Chapter, shall mean a person who has been duly registered and licensed as a professional engineer by the Board established by this Chapter.
- (9) "Registered land surveyor" shall mean a person who, by reason of his special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, as herein defined, as attested by his registration as a registered land surveyor by the Board.
- (10) "Responsible Charge". — This term means direct control and personal supervision, either of engineering work or of land surveying, as the case may be. (1951, c. 1084, s. 1; 1953, c. 999, s. 1; 1973, c. 449; 1975, c. 681, s. 1.)

§ 89C-4. State Board of Registration; appointments; terms. — A State Board of Registration for Professional Engineers and Land Surveyors, whose duty it shall be to administer the provisions of this Chapter, is hereby created. The Board shall consist of four professional engineers and three registered land surveyors who shall be appointed by the Governor. No more than one of the land surveyor members shall hold dual registration as a registered land surveyor and a professional engineer. Appointments shall preferably, but not necessarily, be selected from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State his written oath or affirmation for the faithful discharge of his duties. Notwithstanding any provision of this Chapter, the present members of the Board shall continue in office as members of the Board until their present terms expire. Appointments to the Board shall be in such a manner that the terms of the several members will continue to expire at differing times. On the expiration of the term of any member, the Governor shall, in the manner provided herein, appoint for a term of five years a professional engineer or land surveyor having the qualifications required by G.S. 89C-5. A member may be appointed for no more than two full terms. Each member shall hold office until the expiration of the term for which appointed or until his successor has been duly appointed and qualified. If a vacancy on the Board, due to resignation, death or any other cause, results in an unexpired term, and such vacancy is not filled within 90 days, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. Provided, such provisional member shall have all the power and duties of a regularly appointed member of the Board pending the appointment by the Governor. (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; 1975, c. 681, s. 1.)

§ 89C-5. Board members; qualifications. — Each engineer member of the Board shall be a citizen of the United States, shall be a resident of North Carolina and shall be a registered professional engineer engaged in the lawful practice of engineering in North Carolina for at least two years.

Each land surveyor member of the Board shall be a citizen of the United States, shall be a resident of North Carolina and shall be a registered land surveyor engaged in the lawful practice of land surveying in North Carolina for at least two years. (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; 1975, c. 681, s. 1.)

§ 89C-6. Compensation and expenses of Board members. — Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for his service the per diem and, in addition thereto, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of his office. (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; 1975, c. 681, s. 1.)

§ 89C-7. Vacancies; removal of member. — The Governor may remove any member of the Board for misconduct, incompetency, neglect of duty, or any sufficient cause, in the manner prescribed by law for removal of State officials. Vacancies in the membership of the Board shall be filled for the unexpired term by appointment by the Governor as provided in G.S. 89C-4. (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; 1975, c. 681, s. 1.)

§ 89C-8. Organization of the Board; meetings; election of officers. — The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a chairman, a vice-chairman, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order. (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; 1975, c. 681, s. 1.)

§ 89C-9. Executive secretary; duties and liabilities. — The Board shall employ an executive secretary who is not a member of the Board. The executive secretary shall be a full-time employee of the Board and perform such duties assigned to him by the secretary subject to the approval of the Board. The executive secretary shall receive a salary and compensation fixed by the Board. The executive secretary shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of his duties. The premium on said bond shall be a necessary and proper expense of the Board. (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; 1975, c. 681, s. 1.)

§ 89C-10. Board powers. — (a) The Board shall have the power to adopt and amend all rules and regulations. Additionally, the Board shall have the power to adopt such rules, rules of procedure, and regulations, as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the giving of examinations and the conduct

thereof, and the power to enforce such rules of professional conduct as may, from time to time, be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified above shall be binding upon all persons registered under this Chapter, including corporations holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board is hereby authorized in the name of the State to apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for registration to such examination as it deems necessary to determine his qualifications.

(e) The Board shall have the power to issue an appropriate certificate of registration to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no such funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and thereafter sit in deciding on any matter which may directly involve punitive action under such testimony.

(g) 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 refresher courses 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 field 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. (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; 1975, c. 681, s. 1.)

§ 89C-11. Secretary; duties and liabilities; expenditures. — The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as "Fund of the Board of Registration for Professional Engineers and Land Surveyors" and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of

its duties, including authorized compensation, shall be paid out of said fund on the warrant signed by the secretary of the Board; provided, however, that at no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of Registration for Professional Engineers and Land Surveyors, conditioned upon the faithful performance of his duties. The premium on said bond shall be regarded as a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive secretary certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board. (1921, c. 1, s. 7; C. S., s. 6055(h); 1951, c. 1084, s. 1; 1959, c. 617; 1975, c. 681, s. 1.)

§ 89C-12. Records and reports of Board; evidence. — The Board shall keep a record of its proceedings and a register of all applicants for registration, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of registration granted, and the date of such action. The books and register of the Board shall be prima facie evidence of all matters recorded therein, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all registered professional engineers and all registered land surveyors shall be prepared by the secretary of the Board current to the month of January of each year; such roster shall be printed by the Board out of the fund of said Board and distributed as set forth in the rules and regulations. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of the receipts and expenditures of the Board, attested by the affidavits of the chairman and the secretary, and a copy of the said roster of registered professional engineers and registered land surveyors. (1921, c. 1, s. 8; C. S., s. 6055(i); 1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

§ 89C-13. General requirements for registration. — (a) Engineer Applicant. — To be eligible for admission to examination for professional engineer an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering only must submit three character references. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of his engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration:

(1) As a professional engineer.

a. Registration by Comity or Endorsement. — A person holding a certificate of registration to engage in the practice of engineering, on the basis of comparable qualifications, issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be registered without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of Engineering Examiners, whose qualifications meet the requirements of this Chapter, may upon application, be registered without further examination.

- b. E.I.T. Certificate, Experience, and Examination. — A holder of a certificate of engineer-in-training issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.
- c. Graduation, Experience, and Examination. — A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.
- d. Graduation, Experience, and Examination. — A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.
- e. Long-Established Practice. — An individual with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to an eight-hour written examination in the principles and practice of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work executed by him and which he personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an engineer-in-training.

- a. Graduation and Examination. — A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, shall be admitted to an eight-hour written examination in the fundamentals of engineering. The applicant shall be notified if the examination

was passed or not passed and if passed he shall be certified as an engineer-in-training, if he is otherwise qualified.

- b. Graduation, Experience, and Examination. — A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to an eight-hour written examination in the fundamentals of engineering. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an engineer-in-training if he is otherwise qualified.

(b) Land Surveyor Applicant. — To be eligible for admission to examination for land surveyor-in-training, or registered land surveyor, an applicant must be of good character and reputation and shall submit five references with his application for registration as a land surveyor, two of which references shall be registered land surveyors having personal knowledge of his land surveying experience, or in the case of an application for certification as a land surveyor-in-training by three references, one of which shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of his education, technical and land surveying experience, exhibits of land surveying projects with which he has been associated, recommendations by references, and reviewing of these categories during an oral examination. The land surveyor applicant's qualifications may be reviewed at an interview if the Board deems it necessary. Educational credit for institute courses, correspondence courses, etc., shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for registration as a land surveyor or for certification as a land surveyor-in-training, respectively:

(1) As a registered land surveyor.

- a. Rightful possession of a B.S. degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of one year or more of progressive practical experience one year of which shall have been under a practicing registered land surveyor and satisfactorily passing such oral and written examination, taken in the presence of and required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying.
- b. Rightful possession of an associate degree in surveying technology or civil engineering technology approved by the Board or with equivalent education and surveying experience satisfactory to the Board, and a record satisfactory to the Board of three years of progressive practical experience, two years of which shall have been under a practicing registered land surveyor, and satisfactorily passing such written and oral examination taken in the presence of and as required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. Anyone who, on or before September 1, 1976, possessed an associate degree in surveying technology, previously approved by the Board, may be considered for examination with two years of experience which shall have been under a practicing registered land surveyor.

- c. Land Surveyor-in-Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor-in-

training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.

- d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of six years of progressive practical experience, four years of which shall have been under a practicing registered land surveyor, and satisfactorily passing such oral and written examination written in the presence of and required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying.
- e. The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by him under proper supervision and which he has personally accomplished or supervised.
- f. Registration by Comity or Endorsement. — A person holding a certificate of registration to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, he may be asked to take such examinations as the Board deems necessary to determine his qualifications, but in any event he shall be required to pass a written examination of not less than four hours' duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.
- g. A licensed professional engineer who can satisfactorily demonstrate to the Board that his formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the two four-hour examinations on the principles and practices of land surveying. Upon satisfactorily passing the examinations, the applicant will be granted a license to practice land surveying in the State of North Carolina.
- h. Professional Engineers in Land Surveying. — Any person presently licensed to practice professional engineering under this Chapter shall upon his application be licensed to practice land surveying, providing his written application is filed with the Board within one year next after June 19, 1975.

(2) As a land surveyor-in-training:

- a. Rightful possession of an associate degree in surveying technology approved by the Board or with equivalent education and surveying experience satisfactory to the Board, and a record satisfactory to the Board of one year of progressive practical experience under a practicing registered land surveyor, and satisfactorily passing such written and oral examination taken in the presence of and as required by the Board.
- b. Rightful possession of a B.S. degree in surveying or other equivalent curricula in surveying, all approved by the Board and satisfactorily

passing such oral and written examination written in the presence of and required by the Board.

- c. The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by him under proper supervision and which he has personally accomplished or supervised. (1921, c. 1, s. 9; C. S., s. 6055(j); 1951, c. 1084, s. 1; 1953, c. 999, s. 2; 1957, c. 1060, ss. 2, 3; 1975, c. 681, s. 1.)

§ 89C-14. Application for registration; registration fees. — (a) Application for registration as a professional engineer or registered land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom should be members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) The registration fee shall be established by the Board in amounts not to exceed seventy dollars (\$70.00) for an engineer or seventy dollars (\$70.00) for registration as a land surveyor which shall accompany the applications. The fee for comity registration of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation (see G.S. 89C-24) shall be in accordance with Chapter 55B.

(d) Should the Board deny the issuance of a certificate of registration to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination provided the charge for any reexamination shall not exceed twenty dollars (\$20.00).

A candidate failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board. (1921, c. 1, s. 9; C. S., s. 6055(j); 1951, c. 1084, s. 1; 1953, c. 999, s. 2; 1957, c. 1060, ss. 2, 3; 1975, c. 681, s. 1.)

§ 89C-15. Examinations. — (a) The examinations will be held at such times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in G.S. 89C-13, and has been approved by the Board for admission to the examination as follows:

- (1) Engineering Fundamentals. — Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the examinee for an engineer-in-training certificate, provided he has met all other requirements for certification required by this Chapter.
- (2) Principles and Practice of Engineering. — Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer, provided he

has met the other requirements for registration required by this Chapter.

- (3) **Surveying Fundamentals.** — Consists of two four-hour examinations on the elementary disciplines of land surveying. Passing both of these examinations qualifies the examinee for a land surveyor-in-training certificate provided he has met all other requirements for certification required by this Chapter.
- (4) **Principles and Practices of Land Surveying.** — Consists of two four-hour examinations on the basic and applied disciplines of land surveying, one examination on basic disciplines and the other examination covering applied disciplines. Passing each of these examinations qualifies the examinee for a registered land surveyor certificate provided he has met all other requirements for certification required by this Chapter. (1975, c. 681, s. 1.)

§ 89C-16. Certificates of registration; effect; seals. — (a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of registration giving the registrant proper authority to practice his profession in this State. The certificate of registration for a professional engineer shall carry the designation "professional engineer," and for a land surveyor, "registered land surveyor," shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges and responsibilities of a professional engineer or a registered land surveyor, while the said certificate of registration remains unrevoked or unexpired.

(c) Each registrant hereunder shall upon registration obtain a seal of a design authorized by the Board bearing the registrant's name, serial number, and the legend, "professional engineer," or "registered land surveyor." Final drawings, specifications, plans and reports prepared by a registrant shall, when issued, be certified and stamped with the said seal or facsimile thereof unless the registrant is exempt under the provisions of G.S. 89C-25(g). It shall be unlawful for a registrant to affix, or permit his seal and signature or facsimile thereof to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use his registered land surveyor seal. (1921, c. 1, s. 11; C. S., s. 6055(m); 1951, c. 1084, s. 1; 1957, c. 1060, s. 6; 1975, c. 681, s. 1.)

§ 89C-17. Expirations and renewals of certificates. — Certificates for registration shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the Board to notify by mail every person, registered hereunder, of the date of the expiration of his certificate and the amount of the fee required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of expiration of such certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed fifteen dollars (\$15.00). Failure on the part of any registrant to renew his certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first 36 months immediately following its invalidation of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed. Failure of a registrant to renew his

registration for a period of 36 months shall require the individual, prior to resuming practice in North Carolina, to submit an application therefor on the prescribed form, and to meet all other requirements for registration as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all registrants who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may enact rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that he has maintained his active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each registrant to inform the Board promptly concerning change in address. (1921, c. 1, s. 9; C. S., s. 6055(k); 1951, c. 1084, s. 1; 1953, c. 1041, s. 9; 1957, c. 1060, s. 4; 1973, c. 1321; c. 1331, s. 3; 1975, c. 681, s. 1.)

§ 89C-18. Reissuance of certificates. — A new certificate of registration, or certificate of authorization, to replace any certificate lost, destroyed, or mutilated, may be issued, subject to the rules of the Board. A charge of five dollars (\$5.00) shall be made for such issuance. (1921, c. 1, s. 10; C. S., s. 6055(l); 1939, c. 218, s. 2; 1951, c. 1084, s. 1; 1953, c. 1041, s. 10; 1957, c. 1060, s. 5; 1973, c. 1331, s. 3; 1975, c. 681, s. 1.)

§ 89C-19. Public works; requirements where public safety involved. — This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and specifications for engineering projects, or a registered land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in his present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental thereto, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes. (1975, c. 681, s. 1.)

§ 89C-20. Rules of professional conduct. — In the interest of protecting the safety, health, and welfare of the public, the Board shall promulgate and adopt rules of professional conduct applicable to practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of Registration for Professional Engineers and Land Surveyors. The currently effective rules shall be published in the Annual Register. Every person registered by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the

practice of engineering and land surveying. In the case of violation of the rules of professional conduct, the Board shall have the responsibility and duty to proceed in accordance with G.S. 89C-22 and Article 3 of Chapter 150A of the General Statutes. (1975, c. 681, s. 1.)

§ 89C-21. Disciplinary action — reexamination, revocation, suspension, reprimand, or fine. — (a) The Board may suspend, refuse to renew, or revoke the certificate of registration, require reexamination, or levy a fine not in excess of five hundred dollars (\$500.00) for any engineer or land surveyor, who is found:

- (1) Guilty of the practice of any fraud or deceit in obtaining a certificate of registration or certificate of authorization.
- (2) Guilty of any gross negligence, incompetence, or misconduct, in the practice of his profession. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice his profession and to suspend his license during any such period.
- (3) Guilty of any felony or any crime involving moral turpitude.
- (4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.
- (5) To have been declared insane or incompetent by a court of competent jurisdiction and has not thereafter been lawfully declared sane or competent.

(b) The Board shall have the power to (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of registration under the provision of this section. (1921, c. 1, s. 10; C. S., s. 6055(l); 1939, c. 218, s. 2; 1951, c. 1084, s. 1; 1953, c. 1041, s. 10; 1957, c. 1060, s. 5; 1973, c. 1331, s. 3; 1975, c. 681, s. 1.)

§ 89C-22. Disciplinary action — charges; procedure. — (a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any individual registrant or against any corporation holding a certificate of authorization. Such charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary of the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been referred.

(c) If, after such hearing, a majority of the entire Board votes in favor of sustaining the charges, the Board shall reprimand, suspend, refuse to renew, or revoke the individual's certificate of registration, or a corporation's certificate of authorization.

(d) An individual registrant having a certificate of registration, or corporation holding a certificate of authorization, aggrieved by a final decision of the Board, may appeal for judicial review as provided by Article 4 of Chapter 150A.

(e) The Board may, upon petition of an individual or corporation, whose certificate has been revoked, for reasons it may deem sufficient, reissue a certificate of registration or authorization, provided that a majority of the members of the Board vote in favor of such issuance. (1921, c. 1, s. 10; C. S., s. 6055(l); 1939, c. 218, s. 2; 1951, c. 1084, s. 1; 1953, c. 1041, s. 10; 1957, c. 1060, s. 5; 1973, c. 1331, s. 3; 1975, c. 681, s. 1.)

§ 89C-23. Unlawful to practice engineering or land surveying without registration; unlawful use of title or terms; penalties; Attorney General to be legal adviser. — Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being registered in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words “engineer” or “engineering” or “professional engineer” or “professional engineering” or “land surveyor” or “land surveying,” or any modification or derivative thereof in its name or form of business or activity except as registered under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining or attempting to obtain a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of registration, or who shall practice or offer to practice when not qualified, or any person who falsely claims that he is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a misdemeanor, and may, upon conviction, be sentenced to pay a fine [of] not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000), or suffer imprisonment for a period not exceeding three months, or both, in the discretion of the court. In no event shall there be representation of or holding out to the public of any engineering expertise by unregistered persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions thereof to enforce the provisions of this Chapter and to prosecute any persons violating same.

The Attorney General of the State or his assistant shall act as legal adviser to the Board and render such legal assistance as may be necessary in carrying out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses therefor shall be paid from funds of the Board. (1921, c. 1, s. 12; C. S., s. 6055(n); 1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

§ 89C-24. 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 registered 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; 1975, c. 681, s. 1.)

§ 89C-25. Limitations on application of Chapter. — This Chapter shall not be construed to prevent or affect:

- (1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or
- (2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the

requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

- (3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or
- (4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or supervision; or
- (5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or country; or
- (6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or
- (7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroad[s], or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work,

not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

- (8) The performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.
- (9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation. (1921, c. 1, s. 13; C. S., s. 6055(o); 1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

§ 89C-26. Duties of register of deeds. — It shall be unlawful for the recorder of deeds or the register of titles or any county or proper public authority, to file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not have impressed thereon, and affixed thereto, the personal signature and seal of a registered land surveyor by whom, or under whose responsible charge the map, plat, survey, or other documents were prepared. (1975, c. 681, s. 1.)

§ 89C-27. Invalid sections; severability. — If any of the provisions of this Chapter, or if any rule, regulation or order thereunder, or if the application of such provision to any person or circumstance shall be held invalid, the remainder of this Chapter and the application of such provision of this Chapter or rule, regulation or order to persons or circumstances, other than those as to which it is held valid, shall not be affected thereby. (1975, c. 681, s. 1.)

§ 89C-28. Existing registration not affected. — Nothing in this Chapter shall be construed as affecting the status of registration of any professional engineer or registered land surveyor who is rightfully in possession of a certificate of registration duly issued by the Board and valid as of July 1, 1975. (1951, c. 1084, s. 1; 1959, c. 1236, s. 2; 1975, c. 681, s. 1.)

Chapter 89D.

Landscape Contractors.

Sec.		Sec.	
89D-1.	Certificate required.	89D-6.	Registers of applicants and certificate holders.
89D-2.	Definition.	89D-7.	Denial, revocation or suspension of certificate.
89D-3.	Application of Chapter.	89D-8.	Out-of-state applicants.
89D-4.	Landscape Contractors' Registration Board created; membership; compensation; powers, etc.	89D-9.	Persons in practice prior to July 1, 1976.
89D-5.	Application for certificate; examination; renewal.	89D-10.	Injunctions for violation of Chapter.

§ 89D-1. Certificate required. — On and after December 1, 1975, it shall be unlawful for any person, partnership, association or corporation in this State to use the title "landscape contractor," or to advertise as such without first obtaining a certificate issued by the North Carolina Landscape Contractors' Registration Board under provisions of this Chapter. (1975, c. 741, s. 1.)

Editor's Note. — Session Laws 1975, c. 741, s. 12, makes this Chapter effective Dec. 1, 1975.

§ 89D-2. Definition. — A "landscape contractor" within the meaning of this Chapter is any person, partnership, association or corporation who for compensation or valuable consideration or promise thereof engages in the business requiring the art, experience, ability, knowledge, science and skill to install, plant, repair and maintain gardens, lawns, shrubs, vines, bushes, trees and other decorative vegetation including the grading and preparation of plots and areas of land for decorative treatment and arrangement; who constructs or installs garden pools, fountains, pavilions, conservatories, hothouses and greenhouses, incidental retaining walls, fences, walks, drainage and sprinkler systems; or who engages in incidental construction in connection therewith, or does any part thereof in such a manner that, under an agreed specification, an acceptable landscaping project can be executed. (1975, c. 741, s. 2.)

§ 89D-3. Application of Chapter. — The provisions of this Chapter shall not apply to and shall not include any person, partnership, association or corporation who shall perform any of the acts aforesaid in G.S. 89D-2 with reference to any property, so long as that person, partnership, association or corporation shall not use the title "landscape contractor." (1975, c. 741, s. 3.)

§ 89D-4. Landscape Contractors' Registration Board created; membership; compensation; powers, etc. — (a) There is hereby created the North Carolina Landscape Contractors' Registration Board, hereinafter called the Board, which shall issue registration certificates of title to landscape contractors. The Board shall be composed of nine members. Two members shall be appointed by the Commissioner of Agriculture; two members shall be appointed by the Governor, with one being and having been for the preceding five years prior to the date of his appointment actively and principally engaged in the business of landscape contracting, and with one being a landscape architect as defined in G.S. 89A-1; and five members shall be appointed by the board of directors of the North Carolina Association of Nurserymen with at least one from the Western, Piedmont, Central, and Coastal Plain areas of the State.

On the initial Board the appointees of the Commissioner of Agriculture shall serve for a term of three years; one of the appointees of the Governor shall serve for a term of two years and the other appointee shall serve for a term of one year; one of the appointees of the board of directors shall serve for a term of

three years, two for a term of two years, and two for a term of one year. The initial appointments shall be made prior to December 1, 1975, and the terms of successors shall begin on December 1 of the appropriate year thereafter.

After the terms of the initial members of the Board expire, all appointments shall be for terms of three years.

Any vacancy on the Board created by death, resignation or otherwise shall be filled for the unexpired term by the appropriate appointing dean, commissioner, Governor, or board of directors.

(b) From its funds, the Board shall pay its members at the rate set out in G.S. 93B-5: Provided, that at no time shall the expense exceed the cash balance on hand.

(c) The Board shall have power to make such rules and regulations as are not inconsistent with the provisions of this Chapter and the laws of North Carolina. The Board shall not make rules or regulations regulating commissions, salaries, or fees to be charged by registrants under this Chapter. The Board shall adopt a seal for its use, which shall bear thereon the words "North Carolina Landscape Contractors' Registration Board."

(d) The Board may employ a secretary-treasurer and such clerical assistance as may be necessary to carry out the provisions of this Chapter and to put into effect such rules and regulations as the Board may promulgate. The Board shall fix salaries for employees and shall require employees to make good and sufficient surety bond for the faithful performance of their duties.

(e) The Board shall be entitled to the services of the Attorney General of North Carolina in connection with the affairs of the Board or may, on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this Chapter, but the fee paid for such service shall be approved by the Attorney General. (1975, c. 741, s. 4.)

§ 89D-5. Application for certificate; examination; renewal. — (a) Any person, partnership, association or corporation hereinafter desiring to register and be titled as a landscape contractor shall make written application for a certificate of title to the Board on such forms as are prescribed by the Board. Each applicant for a certificate of title as a landscape contractor shall be at least 18 years of age. Prior to July 1, 1976, each applicant for a certificate shall have been actively engaged as an untitled landscape contractor for at least one year prior to date of application. After July 1, 1976, an applicant shall furnish evidence satisfactory to the Board of three years' experience in landscape contracting or the completion of a study or combination of study and experience in landscape contracting equivalent to three years' experience under a landscape contractor. Each application for an initial certificate shall be accompanied by an application fee of twenty dollars (\$20.00).

(b) Any person who files such application to the Board in proper manner to be registered and titled as a landscape contractor shall be required to take an oral or written examination to determine his qualifications. The Board will compile a manual from which the examination will be prepared.

If the results of the examination shall be satisfactory, the Board shall issue to such a person a certificate, authorizing such person to be titled as a landscape contractor in the State of North Carolina, upon payment of privilege taxes now required by law, or that may hereafter be required by law. Anyone failing to pass an examination may be reexamined without payment of additional fee, under such rules as the Board may adopt in such cases.

(c) All certificates granted and issued by the Board under the provisions of this Chapter shall expire annually on December 31. Renewal of such certificates may be effected at any time during the month preceding the expiration date of such certificates upon proper application to the Board accompanied by the payment to the secretary-treasurer of the Board of a renewal fee, as set by the Board, of not more than fifty dollars (\$50.00). The fee for an initial certificate

shall be the same as for a renewal certificate and is in addition to the application fee. All certificates reinstated after expiration date thereof shall be subject to a late filing fee of ten dollars (\$10.00). In the event a registrant fails to obtain a reinstatement of such certificate within 12 months from the date of expiration thereof, the Board may, in its discretion, consider such registrant subject to the provisions of this Chapter relating to the issuance of an original certificate. Duplicate certificates may be issued by the Board upon payment of a fee of one dollar (\$1.00) by the registrant. (1975, c. 741, s. 5.)

§ 89D-6. Registers of applicants and certificate holders. — (a) The secretary-treasurer of the Board shall keep a register of all applicants for certificates of title. The register shall include the date of application, name, place of business, place of residence, and indicate whether the certificate of title was granted or refused.

(b) The secretary-treasurer of the Board shall also keep a current roster showing the names and places of business of all registered titled landscape contractors. The roster shall be kept on file in the office of the Board and be open to public inspection.

(c) On or before the first day of September of each year, the Board shall file with the Secretary of State a copy of the roster of landscape contractors holding certificates of title. At the same time the Board shall file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Board for the preceding fiscal year ending June 30. Such statement shall be attested by the secretary-treasurer of the Board. (1975, c. 741, s. 6.)

§ 89D-7. Denial, revocation or suspension of certificate. — (a) The Board shall have power to revoke or suspend certificates of title herein provided. The Board may upon its own motion or upon a verified complaint in writing hold a hearing as hereinafter provided to investigate the actions of any titled landscape contractor. The Board shall have the power to suspend or revoke any certificate of title issued under the provisions of this Chapter if the registrant has by false or fraudulent representations obtained a certificate; if the registrant has been convicted or has entered a plea of nolo contendere to any crime involving moral turpitude in any court, State or federal; if the registrant is found to have committed any act which constitutes improper, fraudulent or dishonest dealing; or if the registrant violates any rule or regulation duly promulgated by the Board.

(b) In all proceedings under this section for the revocation, denial or suspension of certificates, the provisions of Chapter 150 or Chapter 150A, of the General Statutes, whichever is in effect, shall be applicable. (1975, c. 741, s. 7.)

§ 89D-8. Out-of-state applicants. — An applicant from another state which offers registration privileges to residents of North Carolina may be registered 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 a certificate in such other state. The Board may exempt from the examination prescribed in this Chapter a landscape contractor duly registered in another state if a similar exemption is extended to registered landscape contractors from North Carolina. (1975, c. 741, s. 8.)

§ 89D-9. Persons in practice prior to July 1, 1976. — Before July 1, 1976, any person, partnership, corporation or other legal entity submitting an application, application fee and evidence satisfactory to the Board that he has actively engaged in the practice of landscape contracting for one year prior to July 1, 1976, shall be issued a certificate of title without the requirement of examination. (1975, c. 741, s. 10.)

§ 89D-10. Injunctions for violation of Chapter. — The Board shall have authority to petition for, and the superior courts of the State shall have authority to issue, temporary restraining orders, and preliminary and permanent injunctions for violations of this Chapter. (1975, c. 741, s. 11.)

Chapter 90.

Medicine and Allied Occupations.

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Practice of Medicine.

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- 90-202.2. "Podiatry" defined.

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- 90-203 to 90-210.17. [Recodified.]

Article 13A.

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- 90-210.18. State Board; members; election; qualifications; term; vacancies.
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- 90-212 to 90-216. [Repealed.]

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- 90-216.6. Unclaimed bodies; disposition.
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- 90-216.12. Burial or transportation for burial of deceased migrant farm workers.

Article 15A.**Uniform Anatomical Gift Act.**

Sec.

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90-220.3. Persons who may become donees; purposes for which anatomical gifts may be made.

90-220.4. Manner of executing anatomical gifts.

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Article 18A.**Practicing Psychologists.**

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90-270.14. Renewal of licenses.

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Sec.

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ARTICLE 1.*Practice of Medicine.*

§ 90-8. Officers may administer oaths, and subpoena witnesses and records. — The president and secretary of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to the performance of its duties, and to summon and to issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board, and to order that records concerning the treatment of patients relevant to the Board's inquiry be produced before the Board or for inspection and copying by representatives of the Board by the custodian of such records. (1913, c. 20, s. 7; C. S., s. 6612; Ex. Sess. 1921, c. 44, s. 3; 1953, c. 1248, s. 1; 1975, c. 690, s. 1.)

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

§ 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, or who has passed such other examination which the Board deems to be equivalent to the examination given by the Board, 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; 1975, c. 690, s. 2.)

Editor's Note. — The 1975 amendment inserted the language beginning "or who has passed" and ending "examination given by the Board."

§ 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. Such a license may be granted for such a period of time and upon such conditions as the Board may deem advisable. (1907, c. 890; 1913, c. 20, s. 3; C. S., s. 6617; 1969, c. 612, s. 3; 1971, c. 1150, s. 4; 1975, c. 690, s. 3.)

Editor's Note. — The 1975 amendment added the second sentence.

§ 90-14. Revocation, suspension, annulment or denial of license. — The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

- (1) Immoral or dishonorable conduct;
- (2) Producing or attempting to produce an abortion contrary to law;
- (3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with his application for a license;
- (4) Obtained or attempted to obtain practice in his profession by the making of false representations;
- (5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against him, and the results of examination shall be admissible in evidence in a hearing before the Board;
- (6) Unprofessional conduct, including, but not limited to, any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without North Carolina;
- (7) Conviction in any court of the commission of a crime involving moral turpitude, or of the violation of a law involving the practice of medicine or the conviction of a felony;
- (8) By false representations has obtained or attempted to obtain practice, money or anything of value;
- (9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which he has been educated;
- (10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise;
- (11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating his failure to properly

treat a patient and may require such physician to submit to inquiries or examinations, written or oral, by members of the Board or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee;

- (12) Promotion of the sale of drugs, devices, appliances or goods provided for a patient in such a manner as to exploit the patient for financial gain of the physician;
- (13) Suspension or revocation of a license to practice medicine in any other state, or territory of the United States, or other country.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant, revoke a license issued to it, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of his practice as the Board deems advisable. The Board 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 or 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; 1975, c. 690, s. 4.)

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

This section does not deny due process. *Hoke v. Board of Medical Exmrs.*, 395 F. Supp. 357 (W.D.N.C. 1975).

The combination in an agency of investigative and adjudicatory functions does not itself violate due process. *Hoke v. Board of Medical Exmrs.*, 395 F. Supp. 357 (W.D.N.C. 1975).

This section's language itself and in conjunction with established medical ethics sufficiently informs physicians of the standards by which they are to conduct themselves and their practice. *Hoke v. Board of Medical Exmrs.*, 395 F. Supp. 357 (W.D.N.C. 1975).

§ 90-14.2. Hearing before revocation or suspension of a license. — Before the Board shall revoke, restrict or suspend any license granted by it, the licensee shall be given a written notice indicating the general nature of the charges, accusation, or complaint made against him, which notice may be prepared by a committee or one or more members of the Board designated by the Board, and stating that such licensee will be given an opportunity to be heard concerning such charges or complaint at a time and place stated in such notice, or at a time and place to be thereafter designated by the Board, and the Board shall hold a public hearing not less than 30 days from the date of the service of such notice upon such licensee, at which such licensee may appear personally and through counsel, may cross examine witnesses and present evidence in his own behalf. A physician who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the physician has his residence. Such licensee or physician may, if he desires, file written answers to the charges or complaints preferred against him within 30 days after the service of such notice, which answer shall become a part of the record but shall not constitute evidence in the case. (1953, c. 1248, s. 3; 1975, c. 690, s. 5.)

Editor's Note. — The 1975 amendment rewrote the first sentence.

Quoted in *Hoke v. Board of Medical Exmrs.*, 395 F. Supp. 357 (W.D.N.C. 1975).

§ 90-18.1. Limitation on physician's assistants and registered nurses authorized to prescribe, compound and dispense drugs. — Any registered nurse or assistant to a physician who is approved to perform medical acts under the provisions of G.S. 90-18 is authorized to prescribe drugs under written

standing orders of the supervising physician, if such function is specifically approved for that person by the Board of Medical Examiners; in accordance with such other safeguards and regulations as promulgated by such Board.

Any such person authorized to prescribe drugs shall be identified by a number assigned by the Board of Medical Examiners and such number shall be indicated in all prescriptions both oral and written.

Any such person is authorized to compound and dispense drugs when such functions are performed under the supervision of a licensed pharmacist in a manner prescribed by rules and regulations adopted by the North Carolina Board of Pharmacy. (1975, c. 627.)

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.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-41.1. Hearings.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 4.

Pharmacy.

Part 1. Practice of Pharmacy.

§ 90-61.1. Pharmacist intern license.

Cited in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

ARTICLE 5.

North Carolina Controlled Substances Act.

§ 90-87. Definitions.

Quoted in *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

§ 90-88. Authority to control.

Cross Reference. — As to the creation and organization of the North Carolina Drug Commission, see §§ 143B-377, 143B-378.

Quoted in *State v. Crews*, 286 N.C. 41, 209 S.E.2d 462 (1974).

§ 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 Drug Authority 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 the 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. Difenoxin.
17. Dimenoxadol.
18. Dimepheptanol.
19. Dimethylthiambutene.
20. Dioxaphetyl butyrate.
21. Dipipanone.
22. Ethylmethylthiambutene.
23. Etonitazene.
24. Etoxeridine.
25. Furethidine.
26. Hydroxypethidine.
27. Ketobemidone.
28. Levomoramide.
29. Levophenacymorphan.
30. Morpheridine.
31. Noracymethadol.
32. Norlevorphanol.
33. Normethadone.
34. Norpipanone.
35. Phenadoxone.
36. Phenampromide.
37. Phenomorphan.
38. Phenoperidine.
39. Piritramide.
40. Proheptazine.
41. Properidine.
42. Propiram.
43. Racemoramide.
44. 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 (except hydrochloride salt).
10. Heroin.
11. Hydromorphenol.
12. Methyl-desorphenine.
13. Methylhydromorphine.
14. Morphine methylbromide.
15. Morphine methylsulfonate.
16. Morphine-N-Oxide.
17. Myrophine.
18. Nicocodeine.
19. Nicomorphine.
20. Normorphine.
21. Pholcodine.
22. Thebacon.
23. Drotebanol.

(1975, c. 443, s. 1; c. 790.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added "(except hydrochloride salt)" to item 9 in subdivision (b).

The second 1975 amendment added "Difenoxin" and numbered it as item 16 in subdivision (a) and renumbered former items 16 through 43 as present items 17 through 44.

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (a) and (b) are set out.

Cited in State v. Aiken, 286 N.C. 202, 209 S.E.2d 763 (1974).

§ 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 Drug Authority 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 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, unless specifically excepted or unless listed in another schedule:

1. Opium and opiate and any salt, compound, derivative or preparation of opium or opiate excluding naloxone and its salts, and excluding naltrexone and its salts, but including the following:
 - (i) Raw opium.
 - (ii) Opium extracts.
 - (iii) Opium fluid extracts.

- (iv) Powdered opium.
 - (v) Granulated opium.
 - (vi) Tincture of opium.
 - (vii) Apomorphine.
 - (viii) Codeine.
 - (ix) Ethylmorphine.
 - (x) Etorphine hydrochloride.
 - (xi) Hydrocodone.
 - (xii) Hydromorphone.
 - (xiii) Metopon.
 - (xiv) Morphine.
 - (xv) Oxycodone.
 - (xvi) Oxymorphone.
 - (xvii) Thebaine.
2. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.
 3. Opium poppy and poppy straw.
 4. Coca leaves and any salts, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
 5. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder from which contains the phenanthrine alkaloids of the opium poppy).
- (1975, c. 443, s. 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote item 1 and added item 5 in subdivision (a).

the amendment, only the introductory paragraph and subdivision (a) are set out.

Cited in *State v. Crews*, 286 N.C. 41, 209 S.E.2d 462 (1974).

As the rest of the section was not changed by

§ 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 Drug Authority 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:

(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. Methypylon.
7. Phencyclidine.
8. Sulfondiethylmethane.

9. Sulfonethylmethane.
10. Sulfonmethane.
11. Any compound, mixture or preparation containing
 - (i) Amobarbital.
 - (ii) Secobarbital.
 - (iii) Pentobarbital.or any salt thereof and one or more active ingredients which are not included in any other schedule.
12. Any suppository dosage form containing
 - (i) Amobarbital.
 - (ii) Secobarbital.
 - (iii) Pentobarbital.or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(1975, c. 442.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added items 11 and 12 to subdivision (b).

As the rest of the section was not changed by

the amendment, only the introductory paragraph and subdivision (b) are set out.

Cited in *State v. Crews*, 286 N.C. 41, 209 S.E.2d 462 (1974).

§ 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 Drug Authority 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. Chlorazepate
5. Chlordiazepoxide
6. Clonazepam
7. Diazepam
8. Ethchlorvynol
9. Ethinamate
10. Flurazepam
11. Mebutamate
12. Meprobamate
13. Methohexital
14. Methylphenobarbital
15. Oxazepam
16. Paraldehyde
17. Petrichloral
18. Phenobarbital

(d) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or

geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Diethylpropion.
2. Pemoline (including organometallic complexes and chelates thereof).
3. Phentermine. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, ss. 8, 15; c. 1446, s. 5; 1975, cc. 401, 819.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, inserted mebutamate in the schedule in subdivision (a) and added subdivision (d).

The second 1975 amendment, effective July 15, 1975, inserted chlorazepate, clordiazepoxide, clonazepam, diazepam,

flurazepam and oxazepam in the schedule in subdivision (a).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (a) and (d) are set out.

§ 90-94. Schedule VI controlled substances.

Applied in *State v. McKinney*, 288 N.C. 113, 215 S.E.2d 578 (1975).

§ 90-95. Violations; penalties.

(f) Repealed by Session Laws 1975, c. 360, s. 2, effective July 1, 1975 to July 1, 1977.
(1975, c. 360, s. 2.)

Editor's Note. —

The 1975 amendment repealed subsection (f), which provided for special probation for persons convicted under this Article. Section 3 of the amendatory act makes it effective July 1, 1975, and provides that it shall expire on July 1, 1977.

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

Section Is Constitutional. —

The presumption that possession of more than five grams of marijuana is possession for the purpose of sale is not unconstitutional. *State v. McAuliffe*, 22 N.C. App. 601, 207 S.E.2d 1 (1974).

Types of Possession. —

In accord with original. See *State v. Bagnard*, 24 N.C. App. 54, 210 S.E.2d 93 (1974).

Constructive Possession Defined. —

Constructive possession of contraband material exists when there is no actual personal dominion over the material but when there is an intent and capability to maintain control and dominion over it. *State v. Davis*, 25 N.C. App. 181, 212 S.E.2d 516 (1975).

Establishing Possession. —

In accord with 1st paragraph in original. See *State v. Bagnard*, 24 N.C. App. 54, 210 S.E.2d 93 (1974).

In accord with 6th paragraph in original. See *State v. Bagnard*, 24 N.C. App. 54, 210 S.E.2d 93 (1974).

Nothing else appearing, a man residing with his wife in an apartment, no one else residing or being present therein, may be deemed in

constructive possession of marijuana located therein, notwithstanding the fact that he is temporarily absent from the apartment and his wife is present therein. *State v. Baxter*, 285 N.C. 735, 208 S.E.2d 696 (1974).

An accused has possession of marijuana within the meaning of this Article, when he has both the power and the intent to control its disposition or use, which power may be in him alone or in combination with another. Constructive possession is sufficient. *State v. Baxter*, 285 N.C. 735, 208 S.E.2d 696 (1974).

Where defendant had been given the keys and the custody of a vehicle by its owner, there were 443.1 grams of marijuana found in the car while defendant was the driver and one of the two bags of marijuana was located just inside the car's door on the driver's side, unobstructed by the seat, viewing the evidence in a light most favorable to the State, the jury could find that defendant had both the power and the intent to control its disposition or use so as to have it in his constructive possession. *State v. Bagnard*, 24 N.C. App. 54, 210 S.E.2d 93 (1974).

An accused has possession of contraband material within the meaning of the law when he has both the power and the intent to control its disposition or use. *State v. Davis*, 25 N.C. App. 181, 212 S.E.2d 516 (1975).

Where the State relied upon several factors to show that the defendant was in constructive possession of heroin, it was not necessary for the State to prove each separate fact beyond a

reasonable doubt. It is enough, if upon the whole evidence, the jury is satisfied beyond a reasonable doubt of the defendant's guilt. *State v. Davis*, 25 N.C. App. 181, 212 S.E.2d 516 (1975).

It is impossible to possess, etc. —

One may not possess a substance with intent to deliver it without having possession thereof. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974); *State v. Stanley*, 24 N.C. App. 323, 210 S.E.2d 496 (1974).

Establishing Intent to Distribute. —

The jury can reasonably infer an intent to distribute from the amount of the substance found, the manner in which it was packaged, and the presence of other packaging materials. *State v. Baxter*, 285 N.C. 735, 208 S.E.2d 696 (1974).

Possession of a controlled substance and distribution, etc. —

Neither the offense of unauthorized possession nor the offense of unauthorized sale of a controlled substance is included within the other offense and one placed in jeopardy as to the one offense is not thereby placed in jeopardy as to the other. Thus, one charged with both offenses may be convicted of both and sentenced to imprisonment for each. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

Possession of heroin, etc. —

Unlawful possession of heroin and unlawful sale of the same heroin are two separate, distinct crimes, and there is no error in imposing the separate sentences therefor. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

Possession of controlled substance is lesser included offense of possession of controlled substance with intent to distribute. *State v. Stanley*, 24 N.C. App. 323, 210 S.E.2d 496 (1974).

Possession is an element of possession with intent to deliver and the unauthorized possession is, of necessity, an offense included within the charge that the defendant did unlawfully possess with intent to deliver. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974); *State v. Stanley*, 24 N.C. App. 323, 210 S.E.2d 496 (1974).

One may unlawfully sell a controlled substance which he lawfully possesses. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

Qualified chemist's identification of green vegetable material as marijuana constituted sufficient showing by the State that it was *Cannabis sativa L.*, a controlled substance under this section. *State v. Bell*, 24 N.C. App. 430, 210 S.E.2d 905 (1975).

Verdict and Judgment. —

Where there was nothing in the record to indicate that the defendants had been convicted previously of a violation of subsection (d), the recital in the judgments that the defendants were found guilty of a felony as a result of possession of phencyclidine hydrochloride was erroneous, and the judgments were modified by striking the word "felony" as it related to the conviction of the defendants for simple possession of phencyclidine hydrochloride. *State v. Gagne*, 22 N.C. App. 615, 207 S.E.2d 384 (1974).

Applied in *State v. Carriker*, 24 N.C. App. 91, 210 S.E.2d 98 (1974); *State v. Carriker*, 287 N.C. 530, 215 S.E.2d 134 (1975); *State v. Battle*, 26 N.C. App. 478, 216 S.E.2d 458 (1975).

Cited in *State v. Crews*, 286 N.C. 41, 209 S.E.2d 462 (1974); *State v. Chapman*, 24 N.C. App. 462, 211 S.E.2d 489 (1975).

§ 90-95.2. Cooperation between law-enforcement agencies. — (a) The head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the provisions of this Article if so requested in writing by the head of the other agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the other agency (including in an undercover capacity) and lending equipment and supplies. While working with another agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities as the officers of the requesting agency in addition to those he normally possesses. While on duty with the other agency, he shall be subject to the lawful operational commands of his superior officers in the other agency, but he shall for personnel and administrative purposes remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workmen's compensation when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

- (1) "Head" means any director or chief officer of a law-enforcement agency, including the chief of police of a local police department and the sheriff of a county, or an officer of the agency to whom the head of the agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law-enforcement agency" means any State or local agency, force, department, or unit responsible for enforcing criminal laws in this State, including any local police department or sheriff's department.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers. (1975, c. 782, s. 1.)

§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases. — When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction. (1975, c. 782, s. 2.)

§ 90-96. Conditional discharge and expunction of records for first offense.

(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 Administrative Office of the Courts 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 Drug Authority, 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 Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts 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.

(1975, c. 650, ss. 1, 2.)

Editor's Note. —

The 1975 amendment, effective Oct. 1, 1975, substituted "Administrative Office of the Courts" for "North Carolina Department of Justice" in the first sentence of subsection (b) and in two places in the second sentence of subsection (c) and substituted "North Carolina Drug Authority" for "North Carolina Department of Justice" in the first sentence of subsection (c).

Session Laws 1975, c. 650, s. 6, provides: "All expunction records presently maintained in the

North Carolina Department of Justice in accordance with G.S. 90-96, G.S. 90-113.14 and G.S. 15-223 will be transferred to the Administrative Office of the Courts at the time this act becomes effective. All files containing the names of all persons convicted under Article 5 and 5A of Chapter 90 of the General Statutes will be transferred to the North Carolina Drug Authority at the time this act becomes effective."

As subsections (a) and (d) were not changed by the amendment, they are not set out.

§ 90-103. Revocation or suspension of registration.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-106. Prescriptions and labeling.

(i) A manufacturer's sales representative may distribute a controlled substance as a complimentary sample only upon the written request of a practitioner. Such request must be made on each distribution and must contain the names and addresses of the supplier and the requester and the name and quantity of the specific controlled substance requested. The manufacturer shall maintain a record of each such request for a period of two years. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, s. 15; 1975, c. 572.)

Editor's Note. —

The 1975 amendment added subsection (i).

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

§ 90-112. Forfeitures.

Owner of a motor vehicle seized under the provisions of this section from a legal possessor of such motor vehicle does not have standing to intervene and petition for return of his vehicle as he does under the provisions of

G.S. 18A-21. Opinion of Attorney General to Honorable Robert Rouse, 44 N.C.A.G. 262 (1975).

§ 90-112.1. Remission or mitigation of forfeitures; possession pending trial. — (a) Whenever, in any proceeding in court for a forfeiture, under G.S. 90-112 of any conveyance seized for a violation of this Article the court shall have exclusive jurisdiction to continue, remit or mitigate the forfeiture.

(b) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (i) that he has an interest in such conveyance, as owner or otherwise, which he acquired in good faith; (ii) that he had no knowledge, or reason to believe, that it was being or would be used in the violation of laws of this State relating to controlled substances; (iii) that his interest is in an amount in excess or equal to the fair market value of such conveyance.

(c) If the court, in its discretion, allows the remission or mitigation the conveyance shall be returned to the claimant; and should there be joint request of any two or more claimants, whose claims are allowed, the court shall order the return of the conveyance to such of the joint requesting claimants as have the prior claim on lien. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the State. In all other cases the court shall order disposition of such conveyance as provided in G.S. 90-112. and after satisfaction of the expenses of the sale, and such claims as may be approved by the court, the funds 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 which said vehicle was seized.

(d) If the court should determine that the conveyance should be held for purposes of evidence, then it may order the vehicle to be held until the case is heard. (1975, c. 601.)

§ 90-113.1. Burden of proof; liabilities.

Prosecution of Agent of Officer. — It would violate every precept of fair play and fundamental justice to allow a law-enforcement officer to benefit from this section's protection

and at the same time prosecute his youthful agent, who at his insistence violated the

provisions of the act. *State v. Stanley*, 288 N.C. 19, 215 S.E.2d 589 (1975).

§ 90-113.2. Judicial review.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 5A.

North Carolina Toxic Vapors Act.

§ 90-113.14. Conditional discharge and expunction of records for first offenses.

(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 Administrative Office of the Courts 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 Drug Authority, 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 Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts 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; 1975, s. 650, ss. 3, 4.)

Editor's Note. — The 1975 amendment, effective Oct. 1, 1975, substituted "Administrative Office of the Courts" for "North Carolina Department of Justice" in the first sentence of subsection (b) and in two places in the second sentence of subsection (c) and substituted "North Carolina Drug Authority" for "North Carolina Department of Justice" in the first sentence of subsection (c).

Session Laws 1975, c. 650, s. 6, provides: "All expunction records presently maintained in the North Carolina Department of Justice in

accordance with G.S. 90-96, G.S. 90-113.14 and G.S. 15-223 will be transferred to the Administrative Office of the Courts at the time this act becomes effective. All files containing the names of all persons convicted under Articles 5 and 5A of Chapter 90 of the General Statutes will be transferred to the North Carolina Drug Authority at the time this act becomes effective."

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

ARTICLE 6.

Optometry.

§ 90-115.1. **Acts not constituting the unlawful practice of optometry.** — In addition to the exemptions from this Article otherwise existing the following acts or practices shall not constitute the unlawful practice of optometry:

- (1) The practice of optometry, in the discharge of their official duties, by optometrists in any branch of the military service of the United States or in the full employ of any agency of the United States.
- (2) The teaching of optometry, in optometry schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Examiners in Optometry, by any person or persons licensed to practice optometry anywhere in the United States or in any country, territory or other recognized jurisdiction; provided, however, that such teaching of optometry 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 Examiners in Optometry.
- (3) The practice of optometry in optometry schools or colleges in this State approved by the North Carolina State Board of Examiners in Optometry 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 an optometrist who is either duly licensed in North Carolina or qualified under subdivision (2) above as a teacher. Additionally, the practice of optometry 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 optometry school or college or his designee, the student's optometric education and experience is adequate therefor, subject to review and approval by the said Board of Examiners in Optometry, and such practice is a part of the course of instruction of such students, is performed under the supervision of a duly licensed optometrist 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 Examiners in Optometry.
- (4) The temporary practice of optometry by licensed optometrists of another state or of any territory or country when the same is performed, as clinicians, at meetings or organized optometric societies, associations, colleges or similar optometric organizations, or when such optometrists appear in emergency cases upon the specific call of and in consultation with an optometrist duly licensed to practice in this State.
- (5) The practice of optometry by a person who is a graduate of an optometric school or college approved by the North Carolina State Board of Examiners in Optometry and who is not licensed to practice optometry 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 Examiners in Optometry pursuant to the terms and provisions of this Article, and when such practice of optometry complies with the conditions of said intern permit, or provisional license.
- (6) Any act or acts performed by an optometric assistant or technician to an optometrist 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.

- (7) Optometric assisting and related functions as a part of their instructions by optometric assistant students enrolled in a course conducted in this State and approved by the Board, when such functions are performed under the supervision of an optometrist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of optometry pursuant to the provisions of subdivision (2) above. (1975, c. 733.)

§ 90-118. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses.

(c) The North Carolina State Board of Examiners in Optometry 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 a 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 optometrists found qualified therefor by the Board in examining applicants for licenses as it deems appropriate.

(1975, c. 19, s. 23.)

Editor's Note. —

The 1975 amendment corrected an error in the 1973 act by inserting "a" preceding "license" in the first sentence of subsection (c).

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

§ 90-121.3. Hearings.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 7.

Osteopathy.

§ 90-136. Refusal, revocation or suspension of license; misdemeanors.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 9.

Nurse Practice Act.

§ 90-171.5. Revocation, suspension, or denial of license.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-171.15. Appeals.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 11.***Veterinarians.*****§ 90-182. North Carolina Veterinary Medical Board; appointment, membership, organization.****Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-185. General powers of the Board.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-187.8. Discipline of licensees.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 12.***Podiatrists.***

§§ 90-188 to 90-202.1: Recodified as §§ 90-202.2 to 90-202.14, effective July 1, 1975.

Editor's Note. — This Article was rewritten by Session Laws 1975, c. 672, s. 1, effective July

1, 1975, and has been recodified as Article 12A, § 90-202.2 et seq., of this Chapter.

ARTICLE 12A.***Podiatrists.***

§ 90-202.2. "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; 1975, c. 672, s. 1.)

Editor's Note. — This Article is Article 12 of this Chapter as rewritten by Session Laws 1975, c. 672, s. 1, effective July 1, 1975, and recodified.

Where appropriate, the historical citations to the sections of the former Article have been added to the corresponding sections of the new Article.

§ 90-202.3. Unlawful to practice unless registered. — No person shall practice podiatry 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 podiatry 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. Any person who engages in the practice of Podiatry unless licensed and registered as hereinabove defined, or who attempts to do so, or who professes to do so, 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 act of such unlawful practice shall constitute a separate offense. (1919, c. 78, s. 1; C. S., s. 6764; 1963, c. 1195, s. 2; 1967, c. 1217, s. 2; 1975, c. 672, s. 1.)

§ 90-202.4. Board of Podiatry Examiners; how elected; terms of office; powers; duties. — 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 a vote of all licensed podiatrists who are practicing in the State of North Carolina and who are members of the North Carolina Podiatry Society. All of such members of the Board shall be licensed podiatrists who have practiced podiatry in North Carolina for a period of not less than five years immediately prior to their election. The members of the Board shall be elected for a term of three years: Provided, however, one of the original Board shall serve a term of one year; one, two years; and one, three years. The members of the former Board shall serve until the new Board is elected. The Board shall have authority to elect its own presiding and other officers, and may also elect a person to fill an unexpired term. The Board, in carrying out its responsibilities, shall have authority to employ personnel, full-time or part-time, as shall be determined to be necessary in the work of the Board. The Board shall have authority to pay compensation to the member of the Board holding the position of secretary-treasurer on a basis to be determined by the Board. The Board is required to keep proper and complete records with respect to all of its activities, financial and otherwise, and shall on or before January 30 of each year submit a written report to the Governor and to such other officials and/or agencies as other sections of the General Statutes may require, said report covering the activities of the Board during the previous calendar year, which report shall include a verified financial statement. The Board is authorized to adopt rules and regulations governing its proceedings and the practice of podiatry in this State, not inconsistent with the provisions of this Article. The Board shall maintain at all times an up-to-date list of the names and addresses of each licensed podiatrist in North Carolina, which list shall be available for inspection and which shall be included in the annual report referred to above. (1919, c. 78, s. 3; C. S., s. 6765; 1963, c. 1195, s. 2; 1967, c. 1217, s. 3; 1975, c. 672, s. 1.)

§ 90-202.5. 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 not to exceed one hundred dollars (\$100.00), together with proof that the applicant is more than 18 years of age, is of good moral character, and has obtained a preliminary education equivalent to four years of instruction in a high school and two 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 college of podiatric medicine accredited by the National Council of 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; 1975, c. 672, s. 1.)

§ 90-202.6. 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 at such time and place as the Board may see fit. The Board may make such rules and regulations as it may deem necessary to conduct its examinations and meetings. It shall provide, 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 may include the following subjects: anatomy, physiology, bacteriology, chemistry, dermatology, podiatry, surgery, materia medica, pharmacology and pathology. No applicant shall be granted a license certificate by the Board unless he obtains a general average of 75 or over, and not less than fifty percent (50%) in any one subject. After such examination the Board shall without unnecessary delay, act on same and issue license certificates to the successful candidates signed by each member of the Board; and the Board of Podiatry Examiners shall report annually to each licensed podiatrist in the State of North Carolina. (1919, c. 78, s. 4; C. S., s. 6767; 1963, c. 1195, s. 2; 1967, c. 1217, s. 5; 1975, c. 672, s. 1.)

§ 90-202.7. Reexamination of unsuccessful applicants. — An applicant failing to pass his examination shall within one year be entitled to reexamination upon the payment of an amount not to exceed one hundred dollars (\$100.00), 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; 1975, c. 672, s. 1.)

§ 90-202.8. Revocation of certificate; grounds for; suspension of certificate. — (a) The North Carolina State Board of Podiatry Examiners, in accordance with Chapter 150 (Administrative Procedure Act) of the General Assembly, shall have the power and authority to:

- (1) Refuse to issue a license to practice podiatry;
- (2) Refuse to issue a certificate of renewal of a license to practice podiatry;
- (3) Revoke or suspend a license to practice podiatry; 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 alcohol intoxicants or habit-forming drugs or narcotics to the extent that the same impairs his ability to practice podiatry;
- (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 podiatry 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 podiatry 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 person either in the illegal practice of podiatry or in attempting to fraudulently obtain a license to practice podiatry;
- (10) Has engaged in such immoral conduct as to discredit the podiatry 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 podiatry;
- (13) Is not professionally competent in the practice of podiatry;
- (14) 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;
- (15) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;
- (16) Has committed any fraudulent or misleading acts in the practice of podiatry;
- (17) Has, directly or indirectly, advertised in any manner for professional patronage or business; provided, however, that it shall not be considered advertising for a podiatrist, 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, "podiatrist," on the door or window of his office, or to place his name before the public in any manner expressly approved by the Board;
- (18) Has used or permitted another to use his name, as a podiatrist, in promoting the sale or advertisement of any product or service;
- (19) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of podiatry;
- (20) Has persistently maintained, in the practice of podiatry, unsanitary offices, practices, or techniques;
- (21) Is a menace to the public health by reason of having a serious communicable disease;
- (22) Has distributed or caused to be distributed any intoxicant, drug, or narcotic for any other than a lawful purpose; or
- (23) 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 podiatry while his license is suspended, his license to practice podiatry in the State of North Carolina may be permanently revoked.

(c) Action of the Board shall be subject to judicial review as provided by Chapter 150 (Administrative Procedure Act). (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; 1973, c. 1331, s. 3; 1975, c. 672, s. 1.)

Editor's Note. — Session Laws 1975, c. 672, s. 2, provides: "Upon the effective date of 1976], the reference to Chapter 150 in G.S. 90-194 [90-202.8] shall be amended to refer to Chapter 150A of the General Statutes [Feb. 1, 1976]." Chapter 150A."

§ 90-202.9. 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 one hundred dollars (\$100.00) for each license issued and one hundred dollars (\$100.00) for each examination. From such funds the Board shall pay its members at the rate set out in G.S. 93B-5: 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; 1975, c. 672, s. 1.)

§ 90-202.10. 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 twenty-five dollars (\$25.00) 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 1 following the July 1 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; 1975, c. 672, s. 1.)

§ 90-202.11. Continuing education courses required. — Beginning May 1, 1976, all registered podiatrists then or thereafter licensed in the State of North Carolina shall be required to take annual courses of study in subjects relating to the practice of the profession of podiatry 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 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 podiatrist 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 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. This requirement may be waived by the Board in cases of certified illness or undue hardship as provided in the rules and regulations of the Board. (1975, c. 672, s. 1.)

§ 90-202.12. 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; 1975, c. 672, s. 1.)

§ 90-202.13. Injunctions. — The Board may appear in its own name in the superior courts in an action for injunctive relief to prevent violation of this Article and the superior courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations. (1975, c. 672, s. 1.)

§ 90-202.14. Not applicable to physicians. — Nothing in this Article shall apply to a physician licensed to practice medicine or to a person acting under

the supervision or at his direction in the course of such practice. (1975, c. 672, s. 1.)

ARTICLE 13.

Embalmers and Funeral Directors.

§§ 90-203 to 90-210.17: Recodified as §§ 90-210.18 to 90-210.25, effective October 1, 1975.

Editor's Note. — This Article was rewritten 1975, and has been recodified as Article 13A, § by Session Laws 1975, c. 571, effective Oct. 1, 90-210.18 et seq., of this Chapter.

ARTICLE 13A.

Practice of Funeral Service.

§ 90-210.18. **State Board; members; election; qualifications; term; vacancies.** — (a) The practice of funeral service 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 funeral service profession merits and receives the confidence of the public and that only qualified persons be permitted to practice funeral service in the State of North Carolina. This Article shall be liberally construed to carry out these objects and purposes.

(b) The North Carolina Board of Mortuary Science is hereby created as a continuation of the North Carolina Board of Embalmers and Funeral Directors, which was heretofore created by Chapter 338, Public Laws 1901; by Chapter 174, Public Laws 1931; by Chapter 951, Public Laws 1949; by Chapter 1240, Public Laws 1957; and continued by Chapter 630, Public Laws 1965, and the Board of Mortuary Science is hereby created as the agency of the State for regulation of the practice of funeral service in this State. Said Board of Mortuary Science shall consist of five funeral service licensees licensed to practice in North Carolina and two funeral directors who are licensed to practice funeral directing in North Carolina, or two funeral service licensees licensed to practice 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, funeral directing or funeral service in North Carolina shall be entitled to vote. Each of said five funeral service licensees shall be elected for a term of five years and until his successor shall be elected and shall qualify and each of said two funeral directors or two funeral service licensees 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 funeral service licensee for a term of five years and one funeral director or funeral service licensee 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 funeral service licensee 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 service in North Carolina and actually engaged in the practice of funeral service in North Carolina and unless he has had a license to practice funeral service or 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 chairman of the Commission for Health Services shall serve ex officio as a member of said Board and one public member of the Board appointed by the Governor who shall be a voting member of the Board.

The first member appointed by the Governor shall serve until June 30, 1977, or until his successor is appointed. Thereafter, the Governor shall appoint such member of the Board to serve for a four-year term, beginning on July 1, 1977. The member of the Board appointed by the Governor shall not be a person licensed under this Article and such person shall not be employed by a person licensed under this Article.

(c) Nominations and elections of members of the North Carolina State Board of Mortuary Science shall be as follows:

- (1) An election shall be held each year to elect two persons for membership on the Board of Mortuary Science, each to take office on the first day of January following the election, one funeral service licensee to hold office for a term of five years and until his successor has been elected and shall qualify, and one funeral director or funeral service licensee 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 five-year member shall hold office until the first of January of the fifth year thereafter and until his successor is elected and qualified and the two-year member shall hold office until the first of January of the second year thereafter and until his successor is elected and qualified.
- (2) Every embalmer, funeral director and funeral service licensee with a current North Carolina license shall be eligible to vote in all elections. The holding of such a license to practice in North Carolina shall constitute registration to vote in such elections. The list of licensed embalmers, funeral directors and funeral service licensees shall constitute the registration list for elections.
- (3) All elections shall be conducted by the State Board of Mortuary Science which is hereby constituted a Board of Mortuary Science Elections. If a member of the State Board of Mortuary Science 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 Mortuary Science Elections for that election and the remaining members of the Board of Mortuary Science Elections shall proceed and function without his participation.
- (4) Nomination of candidates for election shall be made to the Board of Mortuary Science Elections by a written petition signed by not less than 20 embalmers, funeral directors or funeral service licensees licensed to practice in North Carolina, and filed with said Board of Mortuary Science Elections subsequent to the fifteenth day of May of the year in which the election is to be held and not later than midnight of the fifteenth 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 Mortuary Science Elections: Provided, that not less than 10 days' notice of such earlier date shall be given to all embalmers, funeral directors and funeral service licensees 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 Mortuary

Science Elections or its designated secretary at any time prior to the closing of the polls in any election.

- (5a) No person shall be eligible for nomination or election to the Board of Mortuary Science who at the time of nomination or election is serving as an elected member of the Board pursuant to the provisions of G.S. 90-210.18(c).
- (6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Mortuary Science 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 Mortuary Science Elections at such time as may be fixed by the Board of Mortuary Science Elections a ballot and a return official envelope addressed to said Board shall be mailed to each embalmer, funeral director and funeral service licensee 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 Mortuary Science 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 Mortuary Science 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 Mortuary Science 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, funeral director or funeral service licensee may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for

more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

- (9) If one of the nominees shall receive a majority of the votes cast, he shall be declared elected. If no candidate shall receive a majority of the votes cast, the said Board shall order a second election to determine a contest between the two candidates receiving the highest number of votes. In any election if there is a tie between candidates, the tie shall be resolved by the vote of the State Board of Mortuary Science, 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 Mortuary Science Elections, or (ii) no candidate for a position, the position shall be filled by the State Board of Mortuary Science. 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 Mortuary Science. In the event of the death or resignation of a member of the State Board of Mortuary Science, after taking office, his position shall be filled for the unexpired term by the State Board of Mortuary Science.
- (12) An official list of all licensed embalmers, funeral directors and funeral service licensees shall be kept at an office of the Board of Mortuary Science Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed embalmer, funeral director or funeral service licensee. As soon as the voting in any election begins, a list of the licensed embalmers, funeral directors, and funeral service licensees 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 Mortuary Science Elections for a period of six months following the close of an election.
- (14) From any decision of the Board of Mortuary Science 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 Mortuary Science 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, funeral directors, and funeral service licensees.

(d) The Board of Mortuary Science Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said Board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered embalmers, funeral directors and funeral service licensees, for the issuance and 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; 1973, c. 476, s. 128; 1975, c. 571.)

Editor's Note. — This Article is Article 13 of this Chapter as rewritten by Session Laws 1975, c. 571, effective Oct. 1, 1975, and recodified.

Where appropriate, the historical citations to the sections of the former Article have been added to the corresponding sections of the new Article.

§ 90-210.19. Oath of office. — The members of said Board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other State officers, which said oath shall be administered by a person qualified to administer such oath and shall be filed in the office of the Secretary of State. (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; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.20. Definitions. — (a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio or television station.

(b) "Board" means the North Carolina State Board of Mortuary Science.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(d) "Embalmer" means any person engaged in the practice of "embalming" as defined below.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of the dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of the dead human body.

(f) "Funeral directing" means engaging in the practice of funeral service except embalming as hereinbefore defined.

(g) "Funeral director" means any person engaged in the practice of "funeral directing" as defined above.

(h) "Funeral establishment" means every place or premises devoted to or used in the care and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the profession of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the "practice of funeral service" as below defined.

(j) "Funeral service profession" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service,

transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. It also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as such with the Board. (1957, c. 1240, s. 2; 1975, c. 571.)

§ 90-210.21. State institutions. — Nothing in this Article shall apply to or in any manner interfere with the duties of any officer of local or State institutions, nor shall be construed to apply to the burial of dead bodies of paupers or of inmates of State institutions when buried at the sole expense of the State. (1957, c. 1240, s. 2; 1975, c. 571.)

§ 90-210.22. Required meetings. — The Board shall hold at least two meetings in each year at which examinations shall be given to qualified applicants for licenses. In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Four members shall constitute a quorum. (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; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.23. Powers and duties of the Board. — (a) The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States.

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be elected and qualify. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties.

(c) The members of the Board shall serve without compensation provided that such members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the Board, and in addition thereto they shall receive per diem and expense reimbursement as provided in G.S. 93B-5 for every day actually spent by such member upon the business of the Board. All expenses, salaries and per diem provided for in this Article shall be paid from fees received under the provisions of this Article and shall in no manner be an expense to the State.

(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which he is a licensee or resident trainee, and every funeral service establishment shall be subject to inspection by the Board at all reasonable times and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident trainee and funeral service establishment shall provide the Board with his or its current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident trainee or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150, to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board.

(e) The Board is empowered to regulate and inspect, according to law, funeral service establishments, their operation and the licenses under which they are operated, and to enforce as provided by law the rules, regulations and requirements of the Division of Health Services and of the city, town or county wherein any such funeral service establishment is maintained and operated.

(f) The Board may establish, supervise, regulate and control programs for the resident trainee. It may approve schools of mortuary science or funeral service, graduation from which is required by this Article as a qualification for the granting of any license, and may establish essential requirements and standards for such approval of mortuary science or funeral service schools.

(g) Schools for teaching mortuary science which are approved by the Board shall have extended to them the same privileges as to the use of bodies for dissecting while teaching as those granted in this State to medical colleges, but such bodies shall be obtained through the same agencies which provide bodies for medical colleges.

(h) The Board shall adopt a common seal.

(i) The Board may perform such other acts and exercise such other powers and duties as may be provided elsewhere in this Article or otherwise by law and as may be necessary to carry out the powers herein conferred. (1901, c. 338, ss. 5, 6, 7, 8, 11; Rev., ss. 4386, 4387, 4389; C. S., ss. 6779, 6780, 6783; 1949, c. 951, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.24. Inspector. — There may be appointed by the Board one or more agents whose title shall be “inspector of the Board of Mortuary Science of the State of North Carolina,” and no person shall be eligible for appointment to such office unless he shall, at said time, be licensed under this Article as a funeral service licensee in the State of North Carolina and unless prior to the time of such appointment he has had not less than five consecutive years’ experience as such a licensee or as a licensed embalmer and funeral director. All inspectors shall hold office during the pleasure of the Board, which shall determine what their duties shall be, and such inspectors are authorized to enter the office, premises, establishment or place of business of any funeral service licensee, funeral director or embalmer in the State of North Carolina or any office, premises, establishment or place where the practice of funeral service is carried on, or where such practice is advertised as being carried on, or where a funeral is being conducted, for the purpose of inspecting said office, premises, or establishment or for the purpose of inspecting the license or registration of any said licensee and resident trainee operating therein.

Inspectors are further authorized to serve any papers or subpoenas issued by the Board or any officer or member thereof under authority of this Article, and also to perform any other duty or duties prescribed or ordered by the Board. (1975, c. 571.)

§ 90-210.25. Licensing. — (a) Qualifications, Examinations, Resident Traineeship and Licensure. —

- (1) To be licensed for the practice of funeral directing under this Article a person must be at least 18 years of age, a resident of this State and a citizen of the United States, of good moral character, and must have completed a minimum of 32 semester hours (or its equivalent) of academic instruction in a college or university accredited by the State of North Carolina or be a graduate of a mortuary science college approved by the State Board of Mortuary Science. An applicant must complete 12 months of resident traineeship as a funeral director before or after the college requirement as stated and pass the required examination provided for in this Article.

Each such applicant for the license shall be examined orally or in writing on the following subjects:

- a. Basic health sciences including bacteriology, hygiene, and public health.
 - b. Funeral service administration including accounting, funeral law, psychology, funeral principles, directing and management.
 - c. Laws of North Carolina and rules and regulations of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (2) To be licensed for the practice of embalming under this Article a person must be at least 18 years of age, a resident of this State and a citizen of the United States, of good moral character and be a graduate of a mortuary science college approved by the State Board of Mortuary Science. An applicant must complete 12 months of resident traineeship as an embalmer before or after the college requirement as stated and pass the required examination provided for in this Article.

Each such applicant for the license shall be examined orally or in writing on the following subjects:

- a. Basic health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health.
 - b. Funeral service arts and sciences including embalming and restorative art.
 - c. Laws of North Carolina and rules and regulations of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (3) To be licensed for the practice of funeral service under this Article a person must be at least 18 years of age, a resident of this State and a citizen of the United States, of good moral character and be a graduate of a mortuary science college approved by the State Board of Mortuary Science. An applicant must complete 12 months of resident traineeship as a funeral service licensee before or after the college requirement as stated and pass the required examination provided for in this Article.

Each such applicant for the license shall be examined orally or in writing on the following subjects:

- a. Basic health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health.
 - b. Funeral service arts and sciences including embalming and restorative art.
 - c. Funeral service administration including accounting, funeral law, psychology, funeral principles, directing and management.
 - d. Laws of North Carolina and rules and regulations of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (4) A person desiring to become a resident trainee shall make application on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof. The application must be sustained by oath of the applicant and be accompanied by a fee not to exceed thirty-five dollars (\$35.00). When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship. When a resident trainee desires to get in-service training to become a funeral director with a person licensed for the practice of funeral directing or when a resident trainee desires to become an embalmer and desires in-service training with a person licensed for the practice of embalming or when a resident trainee desires to become a funeral service licensee and desires in-service training with a funeral service

licensee, a request shall be submitted to the Board. If such permission is granted and at any time thereafter such resident trainee leaves the proctorship of the licensee whose service has been entered, it shall be the duty of such licensee to give such resident trainee an affidavit showing the length of time served with him, which affidavit shall be filed with the Board and made a matter of record in that office, and if such resident trainee engages in practice in this State, a request for permission to do so shall be submitted to the Board.

A certificate of resident traineeship issued as herein provided shall be signed by the resident trainee and shall be renewable one year after the date of original registration, provided, however, that such certificate may not be renewed more than two times unless the resident trainee is still eligible for the license examination. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate shall be canceled; provided further, that there shall be a penalty for the lapse in renewal of five dollars (\$5.00), in addition to the renewal itself; provided, that the registration of any resident trainee who is actually engaged in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of such service without penalties.

All resident trainees registered as provided herein shall be required to report to the Board at least every three months upon forms provided by the Board showing the work which has been completed during the preceding three months of resident traineeship. The data contained in said report shall be certified as correct by the licensee under whom he has served during such period and by the person licensed who is managing the funeral service establishment. The term of traineeship shall be considered as a primary vocation and may not be served during the time the resident trainee is enrolled at a college for the purpose of qualifying for a license under the provisions of this Article.

Before such resident trainee shall be eligible to receive a license for practice, evidence required by this Article shall be presented along with an affidavit from the licensee or affidavits from the licensees under whom the trainee worked showing that the trainee has assisted in the conducting of at least 25 funerals during resident traineeship, if the application is for a funeral director's license, or that the trainee has assisted in the embalming of at least 25 bodies during resident traineeship, if the application is for an embalmer's license, or both such requirements if the application is for a license as a funeral service licensee. In all applications of resident trainees for licenses for practice under this Article, the eligibility of the applicant shall be determined by the records filed with the Board. No credit shall be allowed for such one-year period of resident traineeship that shall have been completed more than three years preceding any examination for such license; provided, however, that the Board may waive the limitations of time prescribed in this section for any person during the period of his service in the armed service of the United States where application for such waiver is made in writing within six months of severance therefrom, and in any case in which the Board by majority vote of its members present shall determine in its discretion that the enforcement thereof will create an unreasonable hardship.

The Board shall have power to suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

At the same time not more than one resident trainee shall be permitted to register under any one person licensed under this Article.

Each sponsor for a registered resident trainee must be actively employed with a funeral establishment as defined in this Article.

- (5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year at fees to be determined by the Board not to exceed thirty-five dollars (\$35.00), and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew same on or before January 31 of the calendar year for which such license is to be renewed shall be deemed to have forfeited and surrendered such license as of such date. No license so forfeited and surrendered shall be reinstated by the Board except upon application in writing within five years following such forfeiture and upon payment of all delinquent annual renewal fees plus a reinstatement fee of ten dollars (\$10.00); provided, however, that the Board may waive the provisions of this section for the holder of any license during the period of service in the armed services of the United States upon application within six months of severance therefrom, and provided further, that the Board may in its discretion upon application of the holder of any license grant the temporary suspension of such license for any period not exceeding five years during which the holder does not engage in the practice of funeral service and reinstate the same without the delinquent annual fees and penalties herein provided whenever such practice is resumed within such period of five years. All licensees now or hereafter licensed in the State of North Carolina are and shall be required to take courses of study in subjects relating to the practice of the profession of embalming and funeral directing 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 15 hours in a continuing period of three years. Attendance for certification must be at a course or courses approved by the Board prior to enrollment. Attendance at any course or courses of study is to be certified to the Board upon a form provided by the Board. The Board shall be allowed to waive this requirement for renewal in cases of certified illness or undue hardship and this requirement shall be waived for all licensed persons who have been licensed for a continuous period of 25 years.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

(b) Reciprocity. — The Board under such rules and regulations as it may prescribe, may grant (i) reciprocal licenses to funeral directors and embalmers licensed in other states, territories, the District of Columbia, and foreign countries; and (ii) special permits, permitting nonresident funeral directors and embalmers to remove a body from and to arrange a funeral or embalm a body in this State, but such privileges shall not include the right to establish a place of business in, nor engage generally in the business of funeral directing and embalming in, this State. The Board shall fix fees to be paid for such reciprocal licenses and courtesy-card privileges.

(c) Registration, Filing and Transportation. — The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service. It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless said body be accompanied by a removal or shipping permit.

(d) Establishment Permit. — No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for each such establishment has been issued by the Board and is conspicuously displayed in such funeral establishment.

No permit to operate a funeral establishment shall be issued by the Board unless each such funeral establishment has in charge a person licensed for the practice of funeral directing or funeral service.

Applications for such funeral establishment permits shall be made on blanks furnished by the Board and filed by the owner, a partner or by the registered agent of the corporation with the Board on or before January 1 of each year and shall be accompanied by a fee of thirty-five dollars (\$35.00). All such permits shall expire on December 31 of each year.

Violation of any provision of this Article or any rules or regulations of the Board committed by any owner, partner, officer, agent or employee of a funeral establishment with the consent of any person, firm or corporation operating such funeral establishment shall be considered sufficient cause for suspension or revocation of such funeral establishment permit.

When more than one person proposes to engage in the operation of a funeral establishment as a partnership or as a corporation, it shall be necessary for one such partner or corporate officer to secure a license for the practice of funeral directing or funeral service and be registered by the Board as the manager of such funeral establishment. No partner or corporate officer shall hold himself out through advertising or otherwise as being a licensee, unless so licensed.

(e) Violations. — Whenever the Board shall have reason to believe that any person to whom a license has been issued by the Board has become unfit to practice within the funeral service profession, or has violated any of the provisions of this Article, or any rule or regulation of the Board, or whenever written complaint charging the holder of such a license with such violation is filed with the Board, any actions taken shall be governed by the provisions of Chapter 150.

The Board may refuse to issue or may refuse to renew or may suspend or may revoke any license, or may place the holder thereof on a term of probation after proper hearing upon finding the holder of such license to be guilty of any of the following acts or omissions:

(1) Conviction of a felony or a crime involving moral turpitude.

(2) Unprofessional conduct which is hereby defined to include:

- a. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;
- b. False or misleading advertising as the holder of a license for practice of funeral service;
- c. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees, provided that this paragraph shall not be deemed to prohibit general advertising by the licensee;
- d. Employment by the licensee of persons known as "cappers," or "steerers" or "solicitors," or other such persons for the purpose of obtaining the services of the licensee;
- e. Employment directly or indirectly of any apprentice, agent, assistant or other persons, on a part- or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee;
- f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business;
- g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral services;
- h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of the picture or name in connection with advertisements or other written material published or caused to be published by the licensee;
- i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;
- j. Violating or cooperating with others to violate any of the provisions of this Article or of the rules and regulations of the Board;
- k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
- l. Refusing to promptly surrender the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof;
- m. Knowingly making any false statement on a certificate of death.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the next-of-kin and of the persons who may be chargeable with the funeral expenses of such decedent. If any such kin be found, his or her authority and directions shall govern the disposal of the remains of such decedent. Any funeral service establishment receiving such remains in violation hereof shall make no charge for any service in connection with such remains prior to delivery of same as stipulated by such kin; provided, however, this section shall not prevent any funeral service establishment from charging and being reimbursed for services

rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the next-of-kin or the persons chargeable with the expenses have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time.

(f) **Unlawful Practices.** — If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than six months, or both, in the discretion of the court. (1901, c. 338, ss. 9, 10, 14; Rev., ss. 3644, 4388; 1917, c. 36; 1919, c. 88; C. S., ss. 6781, 6782; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, ss. 2, 2½; 1965, cc. 719, 720; 1967, c. 691, s. 48; c. 1154, s. 2; 1969, c. 584, ss. 3, 3a, 4; 1975, c. 571.)

ARTICLE 14.

Cadavers for Medical Schools.

§§ 90-212 to 90-216: Repealed by Session Laws 1975, c. 694, s. 1.

ARTICLE 14B.

Disposition of Unclaimed Bodies.

§ 90-216.6. Unclaimed bodies; disposition. — (a) All officers, employees, and agents of the State of North Carolina or of any unit of local government in the State, all undertakers doing business within the State, or any person, institution or agency otherwise having charge or control of an unclaimed body shall immediately notify and, upon the request of the Commission of Anatomy, deliver the dead body to the Commission. The Commission may take and remove the dead body itself in its discretion. No reward or fee shall be paid for such notification of the Commission. The person, institution, or agency having charge or control of an unclaimed body shall make reasonable efforts to notify any interested person of the deceased's death. The recipient to which the Commission of Anatomy distributes the body shall pay all expenses for the embalming, delivery and distribution of the body, and for the reasonable efforts made to notify such persons.

(b) As used herein, an unclaimed body shall mean a dead body which is not claimed for burial upon death and which, as appears to the person, institution or agency having charge or control of the dead body, will not be claimed for burial within 10 days of the deceased's death. The unclaimed body shall remain in the charge or control of the person, institution or agency for a period of 10 days unless the period is extended by the medical examiner or coroner having jurisdiction, or unless the period is shortened by the county director of social services upon his determination that the dead body will not be claimed for burial within 10 days of the deceased's death. Upon the expiration of such period, the person, institution or agency having charge or control of the unclaimed body will deliver it to the Commission at such time and place specified by the Commission or permit the Commission to take and remove the body itself.

(c) All dead bodies not claimed for burial within 10 days of the deceased's death may be received and distributed by the Commission of Anatomy pursuant to the authority contained in G.S. 143B-204 and this Article and in accordance with its rules and regulations. All interests in and rights to dead bodies unclaimed for burial within 10 days of the deceased's death and received by the Commission of Anatomy shall vest in the Commission.

(d) No autopsy shall be performed on an unclaimed body without the written consent of the Commission of Anatomy except that such written consent is not required for an autopsy performed pursuant to Article 15 of Chapter 90 or Article 21 of Chapter 130 of the General Statutes.

(e) Due caution shall be taken to shield the unclaimed body from public view.

(f) Notwithstanding anything contained in this section, an unclaimed body shall not mean a dead body for which the deceased has made a gift thereof pursuant to Article 15A of Chapter 90 of the General Statutes known as the Uniform Anatomical Gift Act.

(g) Any person failing or refusing to perform any duty imposed by this section or violating any of its provisions shall be guilty of a misdemeanor, punishable by a fine and/or imprisonment in the discretion of the court. (1975, c. 694, s. 3.)

§§ 90-216.7 to 90-216.11: Reserved for future codification purposes.

ARTICLE 14C.

Burial or Transportation for Burial of Deceased Migrant Farm Workers.

§ 90-216.12. Burial or transportation for burial of deceased migrant farm workers. — (a) Notwithstanding any other provisions of the law, any person having knowledge of the death of a migrant agricultural worker shall without delay report the fact of such death to the department of social services in the county in which the body is located together with any information he may possess respecting the deceased including his identity, place of employment, permanent residence, and the name, address and telephone number of any relative. The county department of social services shall within a reasonable time of receiving such report transmit to the Department of Human Resources notice of the death of the migrant agricultural worker and any information pertaining thereto. The Department of Human Resources shall, upon notification of the death of a migrant agricultural worker, make every reasonable effort to inform the nearest relative of said death.

(b) In the event that the identity of the deceased migrant agricultural worker cannot be determined within a reasonable period of time, or in the event that the body of the deceased migrant agricultural worker is unclaimed seven days after death, or in the event that the estate or the relatives are unable to provide for the burial of said migrant agricultural worker, the Department of Human

Resources is authorized, empowered, and directed to allocate a sum of not more than four hundred dollars (\$400.00) for the burial of said worker.

Such funds for the burial of a deceased migrant agricultural worker shall be transmitted to the director of the department of social services in the county in which the body is located whose responsibility it shall be to provide for a suitable burial of said worker not to exceed four hundred dollars (\$400.00) in expense.

(c) In the event that the estate or the relatives of a deceased migrant agricultural worker are able to provide for the burial of the migrant agricultural worker but are unable to effect the transportation of the body of the deceased to his legal residence or the legal residence of the relatives, the Department of Human Resources is authorized, empowered, and directed to allocate a sum of not more than two hundred dollars (\$200.00) to defray said transportation expenses.

Payments made from the funds appropriated under this subsection shall be made in accordance with rules and regulations promulgated by the Department of Human Resources.

For purposes of this Article, a migrant agricultural worker is any worker who moves in response to the demand for seasonal agricultural labor. (1975, c. 891.)

ARTICLE 15A.

Uniform Anatomical Gift Act.

§ 90-220.1. **Definitions.** — As used in this Article:

(9) Repealed by Session Laws 1975, c. 32, s. 1.

(10) "Qualified individual" means:

- a. An embalmer holding a valid license to practice in this State,
- b. A physician's assistant approved by and registered with the Board of Medical Examiners pursuant to G.S. 90-18(13).
- c. A registered or a licensed practical nurse certified by the Board of Nursing pursuant to Article 9 of Chapter 90 of the General Statutes, or
- d. A student who is enrolled in an accredited school of medicine operating within this State and who has completed two or more years of a course of study leading to the awarding of a degree of doctor of medicine from such school, and 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 North Carolina. (1969, c. 84, s. 1; 1971, c. 873, s. 1; 1975, c. 32, ss. 1, 2.)

Editor's Note. — The 1975 amendment repealed subdivision (9), which formerly defined "Certified embalmer," and added subdivision (10).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (9) and (10) are set out.

§ 90-220.3. **Persons who may become donees; purposes for which anatomical gifts may be made.** — The following persons, institutions and agencies may become donees of gifts of bodies or parts thereof for the purposes stated:

- (5) The Commission of Anatomy for the distribution of such bodies or parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. (1969, c. 84, s. 1; 1975, c. 694, ss. 4, 5.)

Editor's Note. — The 1975 amendment inserted "institutions and agencies" in the introductory paragraph and added subdivision (5).

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

§ 90-220.4. Manner of executing anatomical gifts.

(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 qualified individual, as defined by G.S. 90-220.1(10), may enucleate eyes for such gift after the proper certification of death by a physician and upon the express direction of any physician other than the one who certified the death of the donor.

(1975, c. 32, s. 3.)

Editor's Note. — The 1975 amendment substituted the present second paragraph of subsection (d) for the former third sentence of the first paragraph of subsection (d), which authorized enucleation by a certified embalmer, and the former second paragraph of subsection

(d), which provided that enucleation might be performed by a certified embalmer when permitted by the next of kin.

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

ARTICLE 16.

Dental Hygiene Act.

§ 90-226. 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. 90-232.

(1975, c. 19, s. 25.)

Editor's Note. — The 1975 amendment corrected an error by substituting "G.S. 90-232" for "G.S. 90-231" at the end of subsection (d).

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

§ 90-231. Opportunity for licensee or applicant to have hearing.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 17.

Dispensing Opticians.

§ 90-249. Powers of the Board.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 18.

Physical Therapy.

§ 90-265. Grounds for refusing licensure; revocation.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 18A.

Practicing Psychologists.

§ 90-270.11. Licensing and examination. — (a) Practicing Psychologist. —

- (1) The Board shall issue a license to practice psychology to any applicant who pays an application fee of fifty dollars (\$50.00) and an additional examination 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 21 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.

- (2) In order for a psychological examiner to be upgraded to a practicing psychologist, the applicant must comply with the requirements set forth in subdivision (1) hereof; however, a fifty dollar (\$50.00) examination fee only shall be required.

(b) Psychological Examiner. —

- (1) The Board shall issue a license to practice psychology to any applicant who pays an application fee of fifty dollars (\$50.00) and an additional examination 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 21 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; 1975, c. 675, ss. 1, 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "an application fee" for "a fee," inserted "and an additional examination fee of fifty dollars

(\$50.00)" near the beginning of subdivision (1) of subsections (a) and (b) and added subdivision (2) of subsection (a).

Cited in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

§ 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 twenty dollars (\$20.00). 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; 1975, c. 675, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, increased the renewal fee in the second sentence from \$10.00 to \$20.00.

§ 90-270.15. Refusal, suspension, or revocation of licenses.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 20.

Nursing Home Administrator Act.

§ 90-279. Licensing function.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 22.

Licensure Act for Speech and Language Pathologists and Audiologists.

§ 90-292. Declaration of policy. — It is declared to be a policy of the State of North Carolina that, in order to safeguard the public health, safety, and welfare; to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and from unprofessional conduct on the part of qualified speech and language pathologists and audiologists and to help assure the availability of the highest possible quality speech and language pathology and audiology services to the communicatively handicapped people of this State, it is necessary to provide regulatory authority over persons offering speech and language pathology and audiology services to the public. (1975, c. 773, s. 1.)

Editor's Note. — Session Laws 1975, c. 773, s. 3, makes the act effective Oct. 1, 1975.

§ 90-293. Definitions. — As used in this Article, unless the context otherwise requires:

- (1) "Audiologist" means any person who engages in the practice of audiology. A person is deemed to be an audiologist if he offers services to the public under any title incorporating the terms of "audiology," "audiologist," "audiological," "hearing clinic," "hearing clinician," "hearing therapist," or any similar title or description of service;

provided, however, that a person licensed under Chapter 93D of the General Statutes may use the term "National Hearing Aid Society, Certified Hearing Aid Audiologist" except in public representations, advertising and telephone directory listings.

- (2) "Board" means the Board of Examiners for Speech and Language Pathologists and Audiologists.
- (3) "License" means a license issued by the Board under the provisions of this Article, including a temporary license.
- (4) "Person" means an individual, organization, or corporate body, except that only individuals can be licensed under this Article.
- (5) "Speech and language pathologist" means any person who represents himself to the public by title or by description of services, methods, or procedures as one who evaluates, examines, instructs, or counsels persons suffering from conditions or disorders affecting speech and language. A person is deemed to be a speech and language pathologist if he offers such services under any title incorporating the words "speech pathology," "speech pathologist," "speech correction," "speech correctionist," "speech therapy," "speech therapist," "speech clinic," "speech clinician," "language pathologist," "language therapist," "logopedist," "communication disorders," "communicologist," "voice therapist," "voice pathologist," or any similar title or description of service.
- (6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and disorders of hearing for the purpose of identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals and/or groups of individuals. A person licensed under this Article may not engage in the dispensing, fitting and selling of hearing aids unless that person is also licensed under Chapter 93D of the General Statutes. For the purpose of this subdivision, the words "habilitation" and "rehabilitation" shall include auditory training, speech reading, hearing aid use evaluation and recommendations, and fabrication of earmolds and similar accessories for clinical testing purposes only.
- (7) "The practice of speech and language pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language for the purpose of identifying, preventing, ameliorating, or modifying such disorders.
- (8) "Unethical conduct" means:
 - a. The obtaining of any fee by fraud or misrepresentation.
 - b. Employing directly or indirectly any suspended or unregistered person to perform any work covered by this Article.
 - c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.
 - d. Falsely representing that the services of a licensed physician will be employed in the practice of speech and language pathology or audiology, or using the term "doctor" in reference to anyone other than a licensed physician involved in said practice, or falsely implying in any manner that the services of a licensed physician are routinely used in said practice. (1975, c. 773, s. 1.)

§ 90-294. License required; Article not applicable to certain activities. —

(a) Licensure shall be granted in either speech and language pathology or audiology independently. A person may be licensed in both areas if he is qualified.

(b) No person may practice or hold himself out as being able to practice speech and language pathology or audiology in this State unless such person holds a current, unsuspended, unrevoked license issued by the Board as provided in this Article or holds a current, unsuspended, unrevoked license of endorsement pursuant to G.S. 90-296. The license required by this section shall be kept conspicuously posted in such person's office or place of business at all times. Nothing in this Article, however, shall be considered to prevent a qualified person licensed in this State under any other law from engaging in the profession for which such person is licensed.

(c) The provisions of this Article do not apply to:

- (1) The activities, services and use of an official title by a person employed by an agency of the federal government and solely in connection with such employment, except that an individual is not exempt from this Article who does work as a speech and language pathologist or audiologist outside the scope of such employment for which a fee may be paid directly or indirectly to such person by or for the recipient of the service.
- (2) The activities and services of a student or trainee in speech and language pathology or audiology pursuing a course of study in an accredited college or university, or working in a training center program approved by the Board, if these activities and services constitute a part of such person's course of study.
- (3) The activities and services of a person who has recently become a resident of the State whose application for licensing with or without examination has been received by the Board, pending disposition of such application, if the person was licensed to perform such services by a state with standards equivalent to or exceeding those of this State, as determined by the Board.
- (4) A person who holds a valid and current credential as a speech and language pathologist or audiologist issued by the North Carolina Department of Public Instruction or who is employed by the North Carolina Schools for the Deaf and Blind, if such person practices speech and language pathology or audiology in a salaried position solely within the confines or under the jurisdiction of the Department of Public Instruction or the Department of Human Resources respectively.

(d) Nothing in this Article shall apply to a physician licensed to practice medicine, or to any person employed by such a physician in the course of his practice of medicine.

(e) This Article shall not be construed to prevent any person licensed in this State under Chapter 93D of the General Statutes of North Carolina from the practice of fitting and selling hearing aids.

(f) The provisions of this Article do not apply to registered nurses and licensed practical nurses or other certified technicians trained to perform audiometric screening tests in industrial operations and whose work is under the supervision of a company physician consulting physician, or licensed audiologist.

(g) The provisions of this Article do not apply to persons who are now or may become engaged in counseling or instructing laryngectomees in the methods, techniques or problems of learning to speak again. (1975, c. 773, s. 1.)

§ 90-295. Qualifications of applicants for licensure. — To be eligible for licensure by the Board as a speech and language pathologist or audiologist, the applicant must:

- (1) Possess at least a master's degree in speech and language pathology or audiology or qualifications deemed equivalent by the Board under regulations duly adopted under this Article. Such degree or equivalent qualifications shall be from an accredited institution.
- (2) Submit transcripts from one or more accredited colleges or universities presenting evidence of the completion of 60 semester hours constituting a well-integrated program of course study dealing with the normal aspects of human communication, development thereof, disorders thereof, and clinical techniques for evaluation and management of such disorders.
 - a. Twelve of these 60 semester hours must be obtained in courses that provide information that pertains to normal development and use of speech, language and hearing.
 - b. Thirty of these 60 semester hours must be in courses that provide information relative to communication disorders and information about and training in evaluation and management of speech, language, and hearing disorders. At least 24 of these 30 semester hours must be in courses in the professional area (speech and language pathology or audiology) for which the license is requested, and no less than six semester hours may be in audiology for the license in speech and language pathology or in speech and language pathology for the license in audiology. Moreover, no more than six semester hours may be in courses that provide credit for clinical practice obtained during academic training.
 - c. Credit for study of information pertaining to related fields that augment the work of the clinical practitioner of speech and language pathology and/or audiology may also apply toward the total 60 semester hours.
 - d. Thirty of the total 60 semester hours that are required for a license must be in courses that are acceptable toward a graduate degree by the college or university in which they are taken. Moreover, 21 of those 30 semester hours must be within the 24 semester hours required in the professional area (speech and language pathology or audiology) for which the license is requested or within the six semester hours required in the other area.
- (3) Submit evidence of the completion of a minimum of 300 clock hours of supervised, direct clinical experience with individuals who present a variety of communication disorders. This experience must have been obtained within the training institution or in one of its cooperating programs.
- (4) Present written evidence from a licensed and/or American Speech and Hearing Association certified speech and language pathologist or audiologist supervisor of nine months of full-time professional experience in which bona fide clinical work has been accomplished in the major professional area (speech and language pathology or audiology) in which the license is being sought. This experience must follow the completion of the requirements listed in subdivisions (1), (2) and (3). Full time is defined as at least nine months in a calendar year and a minimum of 30 hours per week. Half time is defined as at least 18 months in two calendar years and a minimum of 20 hours per week.
- (5) Pass an examination approved by the Board. The Board shall determine the subject and scope of the examination. Written examinations may be supplemented by such oral examinations as the Board shall determine. An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. (1975, c. 773, s. 1.)

§ 90-296. Examinations. — (a) An applicant for registration who has satisfied the requirements of G.S. 90-295 shall appear at a time and place and before persons the Board designates, to be examined by written and/or practical tests, in order to determine such person's qualifications to practice speech and language pathology and audiology.

(b) The Board shall give at least two examinations of the type prescribed in subsection (a) of this section in each year, and additional examinations as the volume of applications makes appropriate.

(c) An examination shall not be required as a prerequisite for a license for a person who holds a certificate of clinical competence issued by the American Speech and Hearing Association in the specialized area for which such person seeks a license. (1975, c. 773, s. 1.)

§ 90-297. Registration and issuance of licenses; licenses for persons licensed in other jurisdiction or engaged in practice on October 1, 1975. —

(a) Upon payment of the fee, the Board shall license each applicant who satisfactorily completes the license requirements.

(b) If the Board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this Article for the practice of audiology or speech pathology, and that state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this Article are qualified to practice audiology or speech pathology, the Board may issue licenses to applicants therefor who hold current, unsuspended, and unrevoked certificates or licenses to practice audiology or speech pathology in the other state or jurisdiction upon payment of the license fee.

(c) The Board shall waive the examination and educational requirements for those applicants who, on October 1, 1975, are actively engaged in the practice of speech and language pathology or audiology upon proof of bona fide practice presented to the Board on or before December 31, 1975. (1975, c. 773, s. 1.)

§ 90-298. Temporary license. — (a) An applicant who fulfills all of the requirements of G.S. 90-295 except those requirements relating to experience, as set forth in subdivision (4) of G.S. 90-295, and who has not previously applied to take the examination provided under subdivision (5) of G.S. 90-295, may apply to the Board for a temporary license.

(b) Upon receiving an application for a temporary license accompanied by a fee in an amount established by the General Assembly, the Board shall issue a temporary license, which entitles the applicant to practice speech and language pathology or audiology for a period of eight weeks after the conclusion of the next examination given after the date of issue.

(c) No temporary license shall be issued by the Board under this section unless the applicant shows to the satisfaction of the Board that the applicant is or will be supervised and trained by a person who holds a valid license under this Article.

(d) If a person who holds a temporary license issued under this section does not take the next examination given after the date of issue, the temporary license shall not be renewed. (1975, c. 773, s. 1.)

§ 90-299. Licensee to notify Board of place of practice. — (a) A person who holds a license shall notify the Board in writing of the address of the place or places where he engages or intends to engage in the practice of speech and language pathology or audiology.

(b) The Board shall keep a record of the places of practice of licensees.

(c) Any notice required to be given by the Board to a licensee may be given by mailing it to him at the address of the last place of practice of which he has notified the Board. (1975, c. 773, s. 1.)

§ 90-300. Renewal of licenses. — A licensee shall annually pay to the Board a fee in an amount established by the General Assembly for a renewal of his license. A 30-day grace period shall be allowed after expiration of a license during which the license may be renewed on payment of a fee in an amount established by the General Assembly. The Board may suspend the license of any person who fails to renew his license before the expiration of the 30-day grace period. After expiration of the grace period, the Board may renew such a license upon the payment of a fee in an amount established by the General Assembly. No person who applies for renewal whose license was suspended for failure to renew shall be required to submit to any examination as a condition of renewal. (1975, c. 773, s. 1.)

§ 90-301. Grounds for suspension or revocation of license. — Any person licensed under this Article may have his license revoked or suspended for a fixed period by the Board under the provisions of North Carolina General Statutes, Chapter 150, for any of the following causes:

- (1) His license has been secured by fraud or deceit practiced upon the Board.
- (2) Fraud or deceit in connection with his services rendered as an audiologist or speech pathologist.
- (3) Unprofessional conduct as defined by the rules established by the Board or violation of the code of ethics made and published by the Board.
- (4) Violation of any lawful order, rule or regulation rendered or adopted by the Board.
- (5) Any violation of the provisions of this Article. (1975, c. 773, s. 1.)

§ 90-302. Prohibited acts and practices. — No person may:

- (1) Sell, barter, transfer or offer to sell or barter a license.
- (2) Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice audiology or speech pathology.
- (3) Alter a license.
- (4) Use or attempt to use a valid license which has been purchased, fraudulently obtained, counterfeited or materially altered.
- (5) Make a false, material statement in an application for a North Carolina license. (1975, c. 773, s. 1.)

§ 90-303. Board of Examiners for speech and language pathology and audiology; qualifications, appointment and terms of members; vacancies; meetings; etc. — (a) There shall be a Board of Examiners for Speech and Language Pathologists and Audiologists, which shall be composed of five members, who shall all be residents of this State. Two members shall have a paid work experience in audiology for at least five years and hold a certificate of clinical competence in audiology of the American Speech and Hearing Association. Two members shall have paid work experience in speech pathology for at least five years and hold a certificate of clinical competence in speech pathology of the American Speech and Hearing Association. One member shall be a physician who is licensed to practice medicine in the State of North Carolina.

(b) The members of the Board shall be appointed by the Governor.

(c) The initial Board shall have members appointed for terms of one year, two years, three years, four years, and five years. Thereafter, Board members shall be appointed for a term of five years.

(d) Members of the Board shall receive no compensation for their service, but shall receive the same per diem, subsistence and travel allowance as provided in G.S. 138-5. (1975, c. 773, s. 1.)

§ 90-304. Powers and duties of Board. — The powers and duties of the Board are as follows:

- (1) To administer, coordinate, and enforce the provisions of this Article, establish fees, evaluate the qualifications of applicants, supervise the

examination of applicants, and issue subpoenas, examine witnesses, and administer oaths, and investigate persons engaging in practices which violate the provisions of this Article.

- (2) To conduct hearings and keep records and minutes as necessary to an orderly dispatch of business.
- (3) To adopt responsible rules and regulations including but not limited to regulations which establish ethical standards of practice and to amend or repeal the same.
- (4) To issue annually a list stating the names of persons currently licensed under the provisions of this Article.
- (5) To employ such personnel as determined by its needs and budget.
- (6) To adopt seals by which it shall authenticate their proceedings, copies of the proceedings, records and the acts of the Board, and licenses. (1975, c. 773, s. 1.)

§ 90-305. Fees. — Persons subject to licensure under this Article shall pay the following fees to the Board:

(1) Application fee	\$25.00
(2) Examination fee	25.00
(3) Initial license fee	25.00
(4) Renewal license	25.00
(5) Temporary license	25.00
(6) Delinquency fee	10.00

(1975, c. 773, s. 1.)

§ 90-306. Penalty for violation. — Any person, partnership or corporation which engages in the professional practices required to be licensed under this Article without obtaining such license, and who is not expressly exempt from the provisions of this Article, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or be imprisoned for a period not exceeding six months, or both, in the discretion of the court. (1975, c. 773, s. 1.)

§ 90-307. Severability. — If any part of this Article is for any reason held unconstitutional, inoperative, or void, such holding of invalidity shall not affect the remaining portions of the Article; and it shall be construed to have been the legislative intent to pass this Article without such unconstitutional, invalid, or inoperative part therein; and the remainder of this Article, after the exclusion of such part or parts, shall be valid as if such parts were not contained therein. (1975, c. 773, s. 1.)

Chapter 90A.**Sanitarians and Water and Wastewater Treatment Facility Operators.****ARTICLE 1.***Sanitarians.***§ 90A-11. Suspension and revocation of certificates.****Editor's Note.—**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 2.*Certification of Water Treatment Facility Operators.***§ 90A-26. Revocation of certificate.****Editor's Note.—**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 3.*Certification of Wastewater Treatment Plant Operators.***§ 90A-41. Revocation of certificate.****Editor's Note.—**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 93.**Public Accountants.**

Sec.

93-12. Board of Certified Public Accountant
Examiners.**§ 93-1. Definitions; practice of law.**

Quoted in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

§ 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 thirtieth day of June. The powers and duties of the Board shall be as follows:

- (5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed examinations to the satisfaction of the Board, in "theory of account," "practical accounting," "auditing," "commercial law," and other related subjects.

From and after July 1, 1961, any person shall be eligible to take the examination given by the Board who is a citizen of the United States, or has declared his intention of becoming such citizen, and has resided for at least one year within the State of North Carolina, is 21 years of age or over and of good moral character, submits evidence satisfactory to the Board that he has completed two years in a college or university, or its equivalent, and shall have completed a course of study in accountancy in a school, college or university approved by the Board. Such applicant, in addition to passing satisfactorily the examination given by the Board, shall have had at least two years' experience on the field staff of a certified public accountant or a North Carolina public accountant in public practice, or shall have served two or more years under the direct supervision of a certified public accountant, as an internal revenue agent or special agent under a District Director of Internal Revenue, or on the field staff of the North Carolina State Auditor, or on the field staff of the Accounting Division of the North Carolina Utilities Commission, or with the United States Defense Contract Audit Agency, and shall have the endorsement of three certified public accountants as to his eligibility. A master's or more advanced degree in economics or business administration from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take

its examinations and withhold certificates until such persons shall have had the required experience.

(1975, c. 107.)

Editor's Note.—

The 1975 amendment rewrote the second sentence of the second paragraph of subdivision (5).

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

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

Classification in subdivision (5) is not essentially arbitrary and without any reasonable basis. The rule has been uniformly

applied. It has been uniformly observed by the Board. No discrimination has been shown. Thus, its application does not deny the equal protection of the laws guaranteed by the State and federal Constitutions. *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

Experience with an attorney-C.P.A. is not sufficient for certification unless the attorney-C.P.A. is in the "public practice of accountancy" as that phrase is used in § 93-1(5). *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

Chapter 93A.

Real Estate Brokers and Salesmen.

Sec.

93A-2. Definitions and exceptions.

93A-4. Applications for licenses; fees; qualifications; examinations; bond; privilege licenses; renewal or

Sec.

reinstatement of license; power to enforce provisions.

93A-6. Revocation or suspension of licenses by Board.

§ 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. A broker shall also be deemed to include a person, partnership, association, or corporation who for a fee sells or offers to sell the name or names of persons, partnerships, associations, or corporations who have real estate for rental, lease, or sale.

(1975, c. 108.)

Editor's Note.—

The 1975 amendment added the second sentence of subsection (a).

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

§ 93A-4. Applications for licenses; fees; qualifications; examinations; bond; privilege licenses; renewal or reinstatement of license; power to enforce provisions.

(c) All licenses granted and issued by the Board under the provisions of this Chapter shall expire on the thirtieth 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, provided, the Board may by regulation require the renewal of such licenses for periods not exceeding three years upon payment of a renewal fee of ten dollars (\$10.00) for each 12-month period; provided further, that in the event of the licensee's death, removal to another state or upon voluntary surrender of the renewed license the Board shall, upon written application by the licensee or his estate, (administrator, executor, or personal representative) refund the amount of the renewal fee prepaid for the unexpired license year or years other than the current year and the renewal receipt or pocket card shall contain notice of this refund provision. 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 12 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.

(1975, c. 112.)

Editor's Note.—

The 1975 amendment, effective Jan. 1, 1976, added the two provisos at the end of the second sentence of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is 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 or savings and loan association in North Carolina 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; provided, such accounts shall not bear interest unless the principals authorize in writing the deposit be made in an

interest-bearing account and also provide for the disbursement of the interest thereon.

(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.

(1975, c. 28.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, inserted "in North Carolina" near the beginning of subdivision (12) of subsection (a).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

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

Chapter 93B.**Occupational Licensing Boards.**

Sec.

93B-5. Compensation and employment of board members.

§ 93B-5. Compensation and employment of board members. — (a) Board members shall receive as compensation for their services per diem not to exceed thirty-five dollars (\$35.00) for each day during which they are engaged in the official business of the board.

(b) Board members shall be reimbursed for all necessary travel expenses in an amount not to exceed that authorized under G.S. 138-6(a)(1), (2), and (3) for officers and employees of State departments.

(c) Board members shall be reimbursed for convention registration fees not to exceed twenty-five dollars (\$25.00) per convention.

(d) Except as provided herein board members shall not be paid a salary or receive any additional compensation for services rendered as members of the board.

(e) Board members shall not be permanent, salaried employees of said board.

[(f) Repealed by Session Laws 1975, c. 765, s. 1, effective July 1, 1975.] (1975, c. 1377, s. 5; 1973, c. 1303, s. 1; c. 1342, s. 1; 1975, c. 765, s. 1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted "and registration fees" following "travel expenses" in subsection (b), substituted "(3)" for "(4)" near the end of that subsection, rewrote subsection (c), substituted "provided herein" for "provided in subsection (c) above" in subsection (d). The section as set out in the 1975 amendatory act did not include the provision added by Session Laws 1973, c. 1303, to this section as it stood before its amendment by Session Laws 1973, c. 1342. This provision was codified, in brackets, as subsection (f) of the

section as amended by the second 1973 act, and read: "No individual may be a member of more than one occupational licensing board at any one time."

Session Laws 1975, c. 765, s. 2, provides: "Members of the State Board of Barber Examiners are hereby authorized to continue the performance of their assigned duties until the expiration of the term of their current appointment. Any member hereafter appointed to the Board for a full term or an unexpired term shall be subject to the provisions of this act."

Chapter 93C.

Watchmakers.

§ 93C-7. Promulgation of regulations.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 93D.

North Carolina State Hearing Aid Dealers
and Fitters Board.

Sec.

93D-3. North Carolina State Hearing Aid Dealers and Fitters Board; composition, organization, duties and compensation.

93D-5. Requirements for registration; examinations; apprentice licenses.

Sec.

93D-11. Annual fees; failure to pay; expiration of license; occupational instruction courses.

§ 93D-3. North Carolina State Hearing Aid Dealers and Fitters Board; composition, organization, duties and compensation.

(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 Chapter 150[A] of the General Statutes. 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;
- (10) Inform the Attorney General of any information or knowledge it acquires regarding any "price-fixing" activity whatsoever in connection with the sales and service of hearing aids;
- (11) Establish and enforce regulations which will guarantee that a full refund will be made by the seller of a hearing aid to the purchaser when presented with a written medical opinion of an otolaryngologist that the purchaser's hearing cannot be improved by the use of a hearing aid;
- (12) Fund, establish, conduct, approve and sponsor instructional programs for persons who hold an apprentice license and a license as well as for persons interested in obtaining adequate instruction or programs of

study to qualify them for registration to the extent that the Board deems such instructional programs to be beneficial or necessary. (1975, c. 550, s. 1.)

Editor's Note.—

The 1975 amendment added subdivision (12) in subsection (c).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

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

§ 93D-5. Requirements for registration; examinations; apprentice licenses.

(c) No license shall be issued to any person until he has first held an apprentice license as set forth in G.S. 93D-9 for a period of at least one year; provided, that this subsection shall not apply to those persons qualified under G.S. 93D-6. (1969, c. 999; 1975, c. 550, s. 2.)

Editor's Note.—

The 1975 amendment added subsection (c).

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

§ 93D-11. Annual fees; failure to pay; expiration of license; occupational instruction courses. — 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. The Board may require all licensees to successfully attend and complete a course or courses of occupational instruction funded, conducted or approved or sponsored by the Board on an annual basis as a condition to any license renewal and evidence of satisfactory attendance and completion of any such course or courses shall be provided the Board by the licensee. (1969, c. 999; 1975, c. 550, s. 3.)

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

§ 93D-13. Discipline, suspension, revocation of licenses and apprentice licenses.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 95.**Department of Labor and Labor Regulations.****Article 1.****Department of Labor.**

Sec.

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95-69.18. Inspection certificates required; misrepresentation as inspector.

Article 8.**Bureau of Labor for the Deaf.**

95-70 to 95-72. [Repealed.]

Article 11.**Minimum Wage Act.**

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95-106. Fees authorized; amusement devices, aerial tramways, etc.

95-107. Assessment and collection of fees; certificates of safe operation.

95-108. Disposition of fees.

95-109. Inspection of erection of rides.

95-110 to 95-115. [Reserved.]

Article 16.**Occupational Safety and Health Act of North Carolina.**

95-156 to 95-160. [Reserved.]

Article 17.**The Uniform Wage Payment Law of North Carolina.**

95-161. Definitions for purposes of Article.

95-162. Application of Article.

95-163. Weekly, biweekly or monthly pay period.

95-164. Employees who are separated from the payroll before paydays.

95-165. Unconditional payment of wages conceded to be due.

95-166. Withholding of wages.

95-167. Notification, posting, and records.

95-168. Provisions of Article may not be waived by agreement.

95-169. Enforcement.

95-170. Penalties.

95-171. Employee's remedies.

95-172. Rules and regulations.

ARTICLE 1.**Department of Labor.**

§ 95-4. Authority, powers and duties of Commissioner. — The Commissioner of Labor shall be the executive and administrative head of the

Department of Labor. In addition to the other powers and duties conferred upon the Commissioner of Labor by this Article, the said Commissioner shall have authority and be charged with the duty:

- (1) To appoint and assign to duty such clerks, stenographers, and other employees in the various divisions of the Department, with approval of said director of division, as may be necessary to perform the work of the Department, and fix their compensation, subject to the approval of the Department of Administration. The Commissioner of Labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subdivision shall not apply to the Industrial Commission, or the Division of Workmen's Compensation.

(1957, c. 269, s. 1.)

Editor's Note. —

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in the first sentence of subdivision (1). See § 143-344(a).

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

ARTICLE 2.

Maximum Working Hours.

§ 95-17. Limitations of hours of employment; exceptions. — No employer shall employ a person for more than 56 hours in any one week, or more than 12 days in any period of 14 consecutive days or more than 10 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, also, that the 10 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.

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 under 18 years of age 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 12 consecutive hours, except that in the case of employees of motion picture theatres, restaurants, dining rooms, and public eating places, such period shall be within 14 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, cotton gins or in domestic service in private homes and boardinghouses, or to the work of persons over 18 years of age in bona fide office, foremanship, clerical or supervisory capacity, executive positions, learned professions, commercial travelers, seasonal hotels and clubhouses, commercial fishing or fruit- and vegetable-processing plants, employers employing a total of not more than three 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 14 consecutive days provided for in this section shall not apply to any employee 18 years of age and over whose employment is covered by or in compliance with the Fair Labor Standards Act of 1938 (Public Law 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.

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 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; 1973, c. 660, s. 1; 1975, c. 19, s. 26.)

Editor's Note. —

The 1975 amendment corrected an error by inserting "Law" following "Public" in the

reference to the Fair Labor Standards Act of 1938 in the fifth paragraph.

ARTICLE 3.

Various Regulations.

§ 95-28.1. Discrimination against any person possessing sickle cell trait or hemoglobin C trait prohibited. — No person, firm, corporation, unincorporated association, State agency, unit of local government or any public or private entity shall deny or refuse employment to any person or discharge any person from employment on account of the fact such person possesses sickle cell trait or hemoglobin C trait. The term "sickle cell trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. The term "hemoglobin C trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests, provided, however, that this section shall not be construed to give employment, promotion, or layoff preference to persons who possess the above traits, or to prevent such persons being discharged for cause. (1975, c. 463, s. 1.)

Editor's Note. — Session Laws 1975, c. 463,

s. 2, makes the act effective July 1, 1975.

ARTICLE 7.

Board of Boiler Rules and Bureau of Boiler Inspection.

§ 95-54. Board of Boiler Rules created; members, appointment, and qualifications; terms of office; vacancies; meetings.

Cross Reference. — For the Uniform Boiler and Pressure Vessel Act, see § 95-69.8 et seq.

§ 95-59. Commissioner of Labor empowered to appoint chief inspector; qualifications; salary. — After the passage of this Article and at any time thereafter that the office may become vacant, the Commissioner of Labor shall appoint, and may remove for cause when so appointed, a citizen of this State who shall have had at the time of such appointment not less than five years' practical experience with steam boilers as a steam engineer, mechanical engineer, boilermaker or boiler inspector, or who has passed the same kind of examination as that prescribed for deputy or special inspectors in G.S. 95-63, to be chief inspector for a term of two years or until his successor shall have been appointed, at an annual salary to be fixed by the Commissioner of Labor with the approval of the Secretary of Administration. (1935, c. 326, s. 5; 1943, c. 469; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "assistant director of the budget" at the end of the section.

§ 95-68. Fees for internal and external inspections. — The person using, operating or causing to be operated any boiler listed in this section, required by this Article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector, for the inspection of any such boiler, fees in accordance with the following schedule:

Miniature boilers, which do not exceed 16 inches inside diameter of shell, 100 pounds per square inch maximum allowable working pressure:	
General inspection	\$ 8.00
Fire tube boilers with hand holes only:	
Internal inspection	9.00
External inspection while under pressure	7.00
Fire tube boiler with manholes:	
Internal inspection	17.00
External inspection while under pressure	7.00
Water tube boilers (coil type):	
General inspection	9.00
Water tube boilers with not more than 500 square feet of heating surface:	
Internal inspection	9.00
External inspection while under pressure	7.00
Water tube boilers with more than 500 but not more than 3,000 square feet of heating surface:	
Internal inspection	17.00
External inspection while under pressure	7.00
Water tube boilers with more than 3,000 square feet of heating surface:	
Internal inspection	27.00
External inspection while under pressure	10.00
Provided, that four dollars (\$4.00) 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 direct field inspection activities of this Article, the surplus, with the approval of the Director of the Budget, to be added to the appropriation for the supervision and administration of this Article within the Department of Labor. (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; 1973, c. 1292, ss. 3-5; 1975, c. 541, s. 1.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975,
for all fired pressure vessels, and Jan. 1, 1976,

for all unfired pressure vessels, increased all of
the fees in the schedule.

§ 95-68.1. Other inspection fees.

Revision of Boiler Inspection Fees. —
Session Laws 1975, c. 541, which amended § 95-68, provides, in s. 2:
“All other boiler inspection fees pursuant to General Statutes 95-68.1 are hereby revised in accordance with the following schedule:
“Low pressure steam and hot water
boilers, equipped only with hand holes
and washout plugs \$ 8.00
“Low pressure steam and hot water
boilers, equipped with manhole 17.00

“Fired hot water supply boilers and fired
hot water heaters equipped with a
manhole 10.00
“Fired hot water supply boilers and fired
hot water heaters without a manhole 5.00
“Each unfired pressure vessel subject to
inspection equipped with a manhole 10.00
“Each unfired pressure vessel subject to
inspection without a manhole 5.00”

§§ 95-69.3 to 95-69.7: Reserved for future codification purposes.

ARTICLE 7A.

Uniform Boiler and Pressure Vessel Act.

§ 95-69.8. **Short title.** — This Article shall be known as the Uniform Boiler and Pressure Vessel Act of North Carolina. (1975, c. 895, s. 1.)

Editor's Note. — Session Laws 1975, c. 895,
s. 13, makes the act effective Jan. 1, 1976.

- § 95-69.9. **Definitions.** — (a) The term “board” shall mean the North Carolina Board of Boiler and Pressure Vessel Rules;
- (b) The term “boiler” shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. This term “boiler” shall also include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves;
- (c) The term “Commissioner” shall mean the North Carolina Commissioner of Labor;
- (d) The term “Director” shall mean the individual appointed by the Commissioner to hold the office of Director of the Boiler and Pressure Vessel Division within the Department of Labor;
- (e) The term “inspection certificate” shall mean certification by the Director that a boiler or pressure vessel is in compliance with the rules and regulations adopted under this Article;

(f) The term "inspector's commission" shall mean a written authorization by the Commissioner for a person who has met the qualifications set out in this Article to conduct inspections of boilers and pressure vessels;

(g) The term "pressure vessel" shall mean a vessel in which the pressure is obtained from an indirect source or by the application of heat from an indirect source or a direct source, other than those included within the term "boiler." (1975, c. 895, s. 2.)

§ 95-69.10. Application of Article; exemptions. — (a) This Article shall apply to all boilers and pressure vessels constructed, used, or designed for operation in this State including all new and existing installations which are operated in connection with business buildings, institutional buildings, industrial buildings, assembly buildings, educational buildings, public residential buildings, recreation buildings, and other public buildings. This Article shall also apply to boilers and hot water supply tanks, and heaters located in hotels, motels, tourist courts, camps, cottages, resort lodges, and similar places whenever the owner or operator advertises in any manner for transit patronage, or solicits such business for temporary abode by transit patrons.

(b) This Article shall not apply to:

- (1) Boilers and pressure vessels owned and/or operated by the federal government;
- (2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the U.S. Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the U.S. Department of Transportation;
- (3) To portable boilers and pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc or other minerals and metals;
- (4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families;
- (5) Pressure vessels used for transportation or storage of liquefied petroleum gas;
- (6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce;
- (7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains;
- (8) Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one-half cubic feet in volume and 600 PSIG pressure; or an inside diameter of six inches with no limitations on pressure;
- (9) Pressure vessels operating at a working pressure not exceeding 15 PSIG pressure;
- (10) Pressure vessels with a nominal water capacity of 120 gallons or less and containing water under pressure at ambient temperature, including those containing air, the compression of which serves as a cushion;
- (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.

(c) The construction requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

- (1) Heat input of 200,000 BTU HR;
- (2) Water temperature of 200 degrees F;
- (3) Nominal water capacity of 120 gallons;

provided that they are equipped with ASME Code and National Board certified safety relief valves and shall continue to be subject to field inspection. (1975, c. 895, s. 3.)

§ 95-69.11. Powers and duties of Commissioner. — The Commissioner of Labor is hereby charged, directed, and empowered:

- (1) To adopt, modify or revoke rules and regulations governing the construction, operation and use of boilers and pressure vessels;
- (2) To supervise the office of the Director of Boiler and Pressure Vessel Division;
- (3) To enforce rules and regulations adopted under authority of this Article;
- (4) To inspect boilers and pressure vessels covered under this Article;
- (5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article;
- (6) To enjoin violations of this Article in the civil and criminal courts of this State;
- (7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location and date of the last inspection of all boilers and pressure vessels to which this Article applies;
- (8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article;
- (9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed or operated in accordance with the provisions of this Article;
- (10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of such accident(s), and he shall have full subpoena powers in conducting said investigation;
- (11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels;
- (12) To establish reasonable fees for the examination and certification of inspectors;
- (13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules. (1975, c. 895, s. 4.)

§ 95-69.12. Office of Director of Boilers and Pressure Vessels Division created; powers and duties. — There is hereby created the office of Director of the Boiler and Pressure Vessel Division within the North Carolina Department of Labor. The person holding this office shall assist the Commissioner in carrying out the provisions of this Article in accordance with the provisions of Chapter 126 of the General Statutes. The Director is charged with the responsibility for the administration of this Article on a day-to-day basis.

The Director shall be primarily responsible for the inspection of boilers and pressure vessels subject to this Article and for the issuance of inspection certificates for those boilers and pressure vessels found suitable. He shall also be responsible for the collection of fees for the inspection of boilers and pressure vessels and transmitting the same to the State Treasurer, where they shall be held in a special account to cover the operating expenses associated with the direct field inspections of this Article. All administrative functions pursuant to this Article shall be paid out of the State general fund. (1975, c. 895, s. 5.)

§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties. — (a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of seven members appointed by the Commissioner, of which two shall be appointed

for a term of one year, two for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each. Of these seven appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers or boilermakers who has had not less than five years' practical experience as a boilermaker within this State, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of a boiler inspection and insurance company authorized to insure boilers and pressure vessels within the State, one a representative of the operating steam engineers in this State, and one a contractor holding a Group 1 North Carolina heating license.

(b) The Board shall meet at least twice annually and shall be responsible for:

- (1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the boiler code of the American Society of Mechanical Engineers and amendments and interpretations thereto made and approved by the council of the Society.
- (2) Devise and administer examinations to applicants seeking a certificate of competency as inspectors of boilers and pressure vessels in this State.
- (3) Issue, suspend, or revoke inspector's commission to inspectors of boilers and pressure vessels within this State.

(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established by the Advisory Budget Commission in accordance with Chapter 138 of the General Statutes. (1975, c. 895, s. 6.)

§ 95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels. — The Commissioner, after consultation with the Board, may adopt, modify or revoke such rules and regulations governing the construction, installation, repair, alteration, inspection, use and operation of boilers and pressure vessels as he deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels.

The procedure for the adoption, modification or revocation of such rules and regulations shall be the same as that contained within the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 895, s. 7.)

§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission. — (a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the Director under this Article:

- (1) **Boiler and Pressure Vessel Inspector.** — Shall be a qualified individual appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so inspected;
- (2) **Special Inspector.** — Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person and/or property from explosions and accidents involving boilers and pressure vessels;

(3) **Owner-User Inspectors.** — Shall be a qualified individual employed on a full-time basis by a company operating boilers or pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of boilers and pressure vessels owned or used by that company and where such inspection program is under the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) **Inspector's Commission.** — Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating boilers and/or pressure vessels for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a certificate of competency.

A commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to the Director. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

(c) **Qualifications for Certificates of Competency.** — To be entitled to a certificate of competency, as one of the above type inspectors, an individual must:

- (1) Have passed an examination provided and administered by the Board; or
- (2) Have passed an examination and been certified in a state having rules and regulations substantially similar to those effective within North Carolina; or
- (3) Hold a certificate of competency of the National Board of Boiler and Pressure Vessel Inspectors; and
- (4) Continue in the employ of the company requesting the certificate of competency from the Board. (1975, c. 895, s. 8.)

§ 95-69.16. Inspections; report, certificates, fees. — (a) All boilers and pressure vessels subject to the provisions of this Article shall be inspected by an authorized inspector, as set out in G.S. 95-69.15, at such intervals and by such methods as the Commissioner may from time to time prescribe by regulation. In determining the frequency with which various categories of boiler and pressure vessels shall be inspected, the Commissioner shall give due consideration the hazard involved and need for protection of the public. Methods of inspection must provide an adequate procedure to insure the safety of individuals likely to be injured by an explosion or accident involving a boiler or pressure vessel.

(b) Upon completion of an inspection the authorized inspector shall file a report on the suitability of the boiler or pressure vessel inspected with the Director. The inspector shall attach the fee paid for the inspection to his report.

(c) Upon receipt of the inspector's report and fee, the Director shall determine whether or not a boiler or pressure vessel is in compliance with the rules and regulations adopted under this Article. If the Director determines it is in compliance he shall issue an inspection certificate authorizing use of the boiler or pressure vessel. When the Director determines a boiler or pressure vessel is not in compliance, he shall so notify the owner or user within 10 working days. No boiler or pressure vessel may be operated without an inspection certificate, except pressure vessels being operated under owner-user provision where administrative procedures of equal safety and competency have been approved by the Board and Commissioner. No more than 60 days grace period may be granted beyond the certificate expiration date. An individual whose boiler or pressure vessel is found in noncompliance may appeal that determination to the

Commissioner within 30 days after notification of the decision is received. (1975, c. 895, s. 9.)

§ 95-69.17. Review of administrative decisions. — (a) Final decisions of the Board or the Director involving revocation or suspension of an inspector's commission or inspection certificate shall not be made until the aggrieved party has been afforded an opportunity for a hearing after notice has been given in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes.

(b) Final decisions by the Board or Director involving denial of an application for a certificate of competency, refusal to issue or renew an inspection certificate need not await a hearing on the merits. After the decision is conveyed to the affected party, that party shall have the right to appeal to the Commissioner for review within 30 days. The Commissioner shall afford the aggrieved party an opportunity for a hearing after which he may affirm, modify or revoke the decision below. The decisions of the Board or the Director within this category shall not be stayed pending review by the Commissioner.

(c) After review by the Commissioner of a decision of the Board or the Director, a party may obtain judicial review within 30 days in accordance with the Administrative Procedure Act. (1975, c. 895, s. 10.)

§ 95-69.18. Inspection certificates required; misrepresentation as inspector. — It shall be unlawful for any person, firm, partnership, association or corporation to operate or use any boiler or pressure vessel in this State, and to which this Article applies, without a valid inspection certificate issued by the North Carolina Department of Labor. Any person, firm, partnership, association or corporation found to be operating or using a boiler or pressure vessel without a valid inspection certificate shall be guilty of a misdemeanor and upon conviction be subject to a fine of one thousand dollars (\$1,000) or imprisonment for 30 days, or both in the discretion of the court.

Any person who knowingly and willfully misrepresents himself as an authorized inspector in North Carolina, shall be guilty of a misdemeanor and upon conviction thereof be fined up to one thousand dollars (\$1,000) or imprisonment for six months, or both in the discretion of the court. (1975, c. 895, s. 11.)

ARTICLE 8.

Bureau of Labor for the Deaf.

§§ 95-70 to 95-72: Repealed by Session Laws 1975, c. 412, s. 1, effective July 1, 1975.

Cross Reference. — As to transfer of the Department of Labor to the Department of Bureau of Labor for the Deaf from the Human Resources, see note to § 168-14.

ARTICLE 10.

Declaration of Policy as to Labor Organizations.

§ 95-78. Declaration of public policy.

Sections 95-79 to 95-81 constitute the public policy of North Carolina with respect to the right to work. *Poole & Kent Corp. v. C.E. Thurston & Sons*, 286 N.C. 121, 209 S.E.2d 450 (1974).

§ 95-79. Certain agreements declared illegal.

Applied in *Poole & Kent Corp. v. C.E. Thurston & Sons*, 286 N.C. 121, 209 S.E.2d 450 (1974).

§ 95-80. Membership in labor organization as condition of employment prohibited.

Cited in *Poole & Kent Corp. v. C.E. Thurston & Sons*, 286 N.C. 121, 209 S.E.2d 450 (1974).

§ 95-81. Nonmembership as condition of employment prohibited.

Cited in *Poole & Kent Corp. v. C.E. Thurston & Sons*, 286 N.C. 121, 209 S.E.2d 450 (1974).

ARTICLE 11.*Minimum Wage Act.***§ 95-86. Definition of terms.** — As used in this Article:

- (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, shoeshine 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. Repealed by Session Laws 1975, c. 605, effective October 1, 1975. (1975, c. 605.)

Editor's Note. — The 1975 amendment, effective Oct. 1, 1975, repealed paragraph k of subdivision (3), which related to persons who had reached their sixty-fifth birthday.

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

§ 95-87. Minimum wages. — Every employer shall pay to each of his employees wages at a rate not less than two dollars (\$2.00) per hour. 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; 1973, c. 802; 1975, c. 256, s. 1.)

Editor's Note. — The 1975 amendment increased the minimum wage per hour from \$1.80 to \$2.00 in the first sentence. Section 2 of the amendatory act provides that the act shall become effective Oct. 1, 1975, and shall apply only to those establishments not covered by the Federal Fair Labor Standards Act.

ARTICLE 14.

Inspection Service Fees.

§ 95-105. Fees authorized; elevators, escalators, etc. — The North Carolina Department of Labor is hereby authorized to assess and collect the following inspection service fees for the installation and alteration of elevators, escalators, dumbwaiters other than those installed or altered in restaurants and special equipment, based on the cost of installation or alteration:

Cost of Installation or Alteration	Unit Fee
\$0 — \$10,000	\$ 70
10,001 — 30,000	110
30,001 — 50,000	155
50,001 — 80,000	195
80,001 — 100,000	215
Over 100,000	260

(1975, c. 777, s. 1.)

Editor's Note. — Session Laws 1975, c. 777, s. 6, makes the act effective Jan. 1, 1976.

§ 95-106. Fees authorized; amusement devices, aerial tramways, etc. — The North Carolina Department of Labor is hereby authorized to assess and collect the following inspection service fees for annual inspections for each location within the State of amusement devices, aerial passenger tramways and inclined railroads:

Type Inspection	Unit Fee
Amusement Devices	\$ 10
Gondolas, Chairlifts and Inclined Railroads	125
J- or T-Bars	56
Rope Tows	28

(1975, c. 777, s. 2.)

§ 95-107. Assessment and collection of fees; certificates of safe operation. — The assessment of the fees pursuant to this Article shall be made against the owner or operator of such equipment and shall be collected at the time of inspection. Certificates of safe operation shall be withheld by the Department of Labor until such time as the assessed fees are collected. (1975, c. 777, s. 3.)

§ 95-108. Disposition of fees. — All fees collected by the Department of Labor pursuant to this Article shall be deposited with the State Treasurer and shall be used exclusively for inspection purposes of the equipment referenced in this Article. (1975, c. 777, s. 4.)

§ 95-109. Inspection of erection of rides. — Inspection of erection of rides is related solely to carnivals and fairs. (1975, c. 777, s. 5.)

§§ 95-110 to 95-115: Reserved for future codification purposes.

ARTICLE 15.

Passenger Tramway Safety.

§ 95-123. Orders.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 16.

Occupational Safety and Health Act of North Carolina.

§ 95-135. Safety and Health Review Board.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 95-141. Judicial review.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§§ 95-156 to 95-160: Reserved for future codification purposes.

ARTICLE 17.

The Uniform Wage Payment Law of North Carolina.

§ 95-161. Definitions for purposes of Article. — (a) The term "Commissioner" means the Commissioner of Labor.

(b) The term "employee" includes any person suffered or permitted to work by an employer.

(c) The term "employer" means any individual, partnership, association, joint stock company, trust, corporation, administrator or executor of an estate, or the receiver, trustee, successor or assign of the same, employing any person. Provided, that any officer, agent, or supervisory personnel, having or sharing in the management responsibilities of a corporation, who shall knowingly violate any of the provisions of this Article shall be considered an employer and held jointly and severally liable with the corporation for said violation.

(d) The term "payday" shall mean that day designated for payment of wages due by virtue of the employment relationship.

(e) The term "pay period" shall mean a period of seven or 14 calendar days, or a calendar month.

(f) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. (1975, c. 413, s. 1.)

Editor's Note. — Session Laws 1975, c. 413, Session Laws 1975, c. 413, s. 13, contains a s. 14, makes the act effective Jan. 1, 1976. severability clause.

§ 95-162. Application of Article. — This Article shall apply only to employers and employees subject to the provisions of the North Carolina Minimum Wage Act as amended or as same may be amended. (1975, c. 413, s. 2.)

§ 95-163. Weekly, biweekly or monthly pay period. — (a) Every employer shall pay all wages due to his employees weekly, biweekly, or monthly, on paydays designated in advance by the employer, in lawful money of the United States or with checks on banks convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due.

(b) The employee shall receive on the current payday all wages accruing to said employee, as of the preceding pay period, by virtue of the employment relationship. The employer shall not withhold any wages from the employee as security for the performance of assigned tasks.

(c) Vacation pay, when it is a matter of employment practice or policy, or both, shall be considered wages pursuant to G.S. 95-161(f) when due. (1975, c. 413, s. 3.)

§ 95-164. Employees who are separated from the payroll before paydays. — (a) When an employer discharges an employee, the employer shall pay the employee's earned wages not later than the next regular payday.

(b) Whenever an employee voluntarily terminates the employment relationship, the employer shall pay the employee's earned wages not later than the next regular payday as provided under G.S. 95-163, either through the regular pay channels or by mail if requested by the employee.

(c) When work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the employer shall pay to such employee not later than the next payday, as designated under G.S. 95-163, either through the regular pay channels or by mail if requested by the employee, wages earned up to and including the time of actual suspension or layoff.

(d) If an employer fails to pay an employee wages required under subsection (a), (b), or (c) of this section, after the employee makes a demand for payment, such employer shall be additionally liable to the employee for liquidated damages in the amount of ten percent (10%) of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the day upon which payment was required or in an amount equal to the unpaid wages, whichever is less. Provided that, for the purpose of such liquidated damages, such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition. (1975, c. 413, s. 4.)

Editor's Note. — In this section as enacted by Session Laws 1975, c. 413, s. 4, subsections (b) and (c) referred to "section 2 of this act." It appears that section 3 of the act, codified as § 95-163, was intended, and the reference has been corrected in the section as set out above.

§ 95-165. Unconditional payment of wages conceded to be due. — (a) In case of a dispute over the amount of wages due, the employer shall pay, without condition and within the time set by this Article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to, including those provided under this Article, as to any balance claimed.

(b) The acceptance by an employee of a payment under this section shall not constitute a release as to balance of his claim and any release required by an

employer as a condition to payment shall be in violation of this Article and shall be null and void. (1975, c. 413, s. 5.)

§ 95-166. Withholding of wages. — No employer may withhold or divert any portion of an employee's wages unless:

- (1) The employer is required or empowered to do so by State or federal law; or
- (2) The employer has a written authorization from the employee for deductions of a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the Commissioner; or
- (3) The deductions are, pursuant to any rule or regulation, for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books. (1975, c. 413, s. 6.)

§ 95-167. Notification, posting, and records. — Every employer shall:

- (1) Notify his employees in writing, at the time of hiring, of the rate of pay, policies on vacation time and pay, sick leave and comparable matters, and the day, hour and place for payment of wages;
- (2) Make available to his employees in writing or through a posted notice maintained in a place accessible to his employees, employment practices and policies with regard to vacation pay, sick leave, and comparable matters;
- (3) Notify his employees in writing, or through a posted notice maintained in a place accessible to his employees of any changes in the arrangements specified above prior to the time of such changes;
- (4) Furnish each employee with an itemized statement of deductions made from his wages under G.S. 95-166 for each pay period such deductions are made;
- (5) Keep posted in a place accessible to his employees an abstract of this Article furnished by the Commissioner; and
- (6) Make and preserve such records of the persons employed by him, including wage and hour records, and make such reports therefrom to the Commissioner, as the Commissioner shall from time to time prescribe by regulations for the purpose of carrying out the provisions of this Article. (1975, c. 413, s. 7.)

Editor's Note. — In this section as enacted by Session Laws 1975, c. 413, s. 7, subdivision (4) referred to "section 5 of this act." It appears

that section 6 of the act, codified as § 95-166, was intended, and the reference has been corrected in the section as set out above.

§ 95-168. Provisions of Article may not be waived by agreement. — Except as provided in G.S. 95-171, no provision of this Article may in any way be contravened or set aside by private agreement. (1975, c. 413, s. 8.)

Editor's Note. — This section as enacted by Session Laws 1975, c. 413, s. 8, began "Except as provided in section 10 of this act." It appears that the reference should have been to section

11 of the act, codified as § 95-171, and the correct reference has been used in the section as set out above.

§ 95-169. Enforcement. — (a) The Commissioner shall enforce and administer the provisions of this Article and the Commissioner or his authorized representative is empowered to hold hearings and to otherwise investigate charges of violations of this Article and to institute actions for penalties hereunder.

(b) The Commissioner or his authorized representative is empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any provision of this Article or any rule or regulation issued hereunder.

(c) The Commissioner or his authorized representatives shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and to take depositions and affidavits in any proceeding before said Commissioner.

(d) At the conclusion of any proceeding before the Commissioner or his authorized representative, he shall make findings of fact, conclusions of law, and order appropriate action be taken between the parties involved. If within 15 days after receipt of his order the parties have failed to comply, the Commissioner shall enforce his order by seeking execution in the District Court of North Carolina, Wake County Division.

(e) Appeal Procedure. — In the case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the District Court of North Carolina, on the application by the Commissioner filed in Wake County, to compel obedience through a proceeding for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court for a refusal to testify therein. (1975, c. 413, s. 9.)

§ 95-170. Penalties. — Any employer who willfully violates any provisions of G.S. 95-163, 95-164, 95-166, 95-167 and 95-168 or fails to comply with any other requirement of this Article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each separate offense, or by imprisonment of not more than 30 days, or both in the discretion of the court. (1975, c. 413, s. 10.)

Editor's Note. — This section as enacted by Session Laws 1975, c. 413, s. 10, referred to violation of "any provisions of sections 2, 3, 5, 6 and 7 of this act." It appears that the intention was to provide a penalty for violation of sections

3, 4, 6, 7 and 8 of the act, codified as §§ 95-163, 95-164, 95-166, 95-167 and 95-168, and the references have been corrected in the section as set out above.

§ 95-171. Employee's remedies. — (a) Action by an employee to recover unpaid wages and/or liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in the behalf of himself or themselves, or such employee or employees may designate an agent or representative to maintain such action.

(b) Actions may be maintained by the Commissioner under G.S. 95-169 upon request by the employee made in the form of a complaint filed with the Commissioner. The Commissioner shall proceed as representative of the employee(s) to recover unpaid wages or enforce compliance with the provisions of this Article. The Commissioner shall have power to join various claimants in one preferred claim or lien against a single employer.

(c) The court in any action brought under this section shall, in addition to any judgment awarded plaintiff(s), allow costs of the action, including cost or fees of any nature, and reasonable attorney's fees to be paid by the defendant. Such attorney's fees in the case of actions brought under this section by the Commissioner shall be awarded to the State and remitted by the Commissioner to the Department of State Treasurer. The Commissioner shall not be required to pay the filing fee or other costs or fees of any nature or compile bond or other security of any nature in connection with such action or with proceedings

supplementary thereto as a condition precedent to the availability of the Commissioner to any process in aid of such action or proceedings. (1975, c. 413, s. 11.)

Editor's Note. — In this section as enacted by Session Laws 1975, c. 413, s. 11, the first sentence of subsection (b) authorized actions to be maintained by the Commissioner "under

section 8 of this act." It appears that section 9 of the act, codified as § 95-169, was intended, and the reference has been corrected in the section as set out above.

§ 95-172. Rules and regulations. — The Commissioner is authorized to issue such rules and regulations as he determines necessary for the purposes of carrying out the provisions of this Article. (1975, c. 413, s. 12.)

Chapter 96.**Employment Security.****Article 2.****Unemployment Insurance Division.**

Sec.

96-8. Definitions.

Sec.

96-12. Benefits.

96-13. Benefit eligibility conditions.

ARTICLE 1.*Employment Security Commission.***§ 96-2. Declaration of State public policy.**

Applied in *In re Beatty*, 286 N.C. 226, 210
S.E.2d 193 (1974).

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 (l) 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 employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this Chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this Chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the Commission within 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 or 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 which 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 include 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 and which is exempt or may be exempted from federal income tax under section 501(c)(3) 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 Department of Human Resources as authorized under Chapter 122 of the General Statutes of North Carolina, and an institution licensed by the Department of Human Resources as authorized under Chapter 131 of the General Statutes of North Carolina.

- m. For purposes of this Chapter, "secondary school" means any school not an institution of higher education as defined in G.S. 96-8(5)l.

(1975, c. 226, s. 3.)

Editor's Note. —

The 1975 amendment added paragraph m to subdivision (5).

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

§ 96-12. Benefits.

(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) Beginning January 1, 1975, through December 31, 1976, there is a "national 'on' indicator" for a week if the United States 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 equalled or exceeded four percent (4%). Subsequent to December 31, 1976, the indicator rate shall be four and one-half percent (4.5%).
- (3) Beginning January 1, 1975, through December 31, 1976, there is a "national 'off' indicator" for a week if the United States 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 percent (4%). Subsequent to December 31, 1976, the indicator rate shall be four and one-half percent (4.5%).
- (4) There is a "State 'on' indicator" for this State for a week if the Commission determines, in accordance with the regulations of the United States 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. equalled 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. equalled or exceeded four percent (4%).

G.S. 96-12(e)A(4)a is hereby inoperative for the period between January 1, 1975 through December 31, 1976.

- (5) There is a "State 'off' indicator" for this State for a week if the Commission determines, in accordance with the regulations of the United States 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%).

G.S. 96-12(e)A(5)a is hereby inoperative for the period between January 1, 1975 through December 31, 1976.

- (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 United States 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 United States 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 United States 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 for 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. Thirteen 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 United States 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.
- H. Notwithstanding the provisions of G.S. 96-9(d)(1)a, 96-9(d)(2)c, 96-12(e)G, or any other provision of this Chapter, any extended benefits paid which are one hundred percent (100%) federally financed shall not be charged in any percentage to any employer's account. (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; 1973, c. 1138, ss. 3-7; 1975, c. 2, ss. 1-5.)

Editor's Note. —

The 1975 amendment, in paragraphs (2) and (3) of subdivision A of subsection (e), added "Beginning January 1, 1975, through December 31, 1976" at the beginning of the first sentence, substituted "four percent (4%)" for "four and one-half percent (4.5%)" at the end of the first

sentence and added the second sentence. The amendment also added the last sentences of paragraphs (4) and (5) of subdivision A of subsection (e) and added subdivision H to subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is 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 —

- (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, 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. Provided further, any employee of a secondary school system or subdivision of a secondary school system now covered for unemployment insurance purposes by federal law, State law, or contract shall be considered available for work during any week such individual is on vacation between successive terms, quarters, academic years, or similar periods between two regular terms, whether or not successive, only if the individual does not have a contract or contracts, written, oral, or implied, to perform services in any capacity for a secondary school system or subdivision of a secondary school system for both such academic years or both such terms. 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. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. (ii) 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) a. 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), 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.
- b. The payment of benefits to any individual based on services for secondary schools, or subdivisions of said secondary schools, subject to this Chapter, or administered under the provisions of this Chapter, shall be in the same manner and under the same conditions of the laws of the Chapter as apply to individuals whose benefit rights are based on other services subject to this Chapter. Except that with respect to services in a secondary school, or subdivision thereof, benefits shall 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, only if the individual does not have a contract or contracts, written, oral, or implied, to perform services in any such capacity for any secondary school for both such academic years or both such terms.
- (5) From January 29, 1975, through February 15, 1977, no week of unemployment for waiting-period credit shall be required of any claimant. Beginning February 16, 1977, an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he has been 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; 1973, c. 172, s. 6; 1975, c. 2, s. 6; c. 8, ss. 1, 2; c. 226, ss. 1, 2.)

Editor's Note. —

The first 1975 amendment, in subdivision (5), added the first sentence and the language preceding "he has been" in the second sentence and deleted "either" preceding "totally" in the second sentence.

The second 1975 amendment, in subdivision (3), added "Except:" and exception clause (i) following the fifth sentence, deleted "Provided further, however, effective July 1, 1969," at the beginning of the former proviso to the fifth sentence and designated that sentence as exception clause (ii).

The third 1975 amendment added the present fifth sentence in subdivision (3) and designated the former provisions of subdivision (4) as paragraph a and added paragraph b.

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (3), (4) and (5) are set out.

"Able to Work". —

In accord with 2nd paragraph in original. See *In re Beatty*, 22 N.C. App. 563, 207 S.E.2d 321 (1974).

The phrase "available for work" is not susceptible of precise definition, and whether a person is available for work differs according to the facts of each individual case. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Large measure of administrative discretion must be granted to the Employment Security Commission in the application to the terms "able to work," "available for work" and "suitable employment" to specific cases. In *re Beatty*, 22 N.C. App. 563, 207 S.E.2d 321 (1974).

Restrictions Claimant Places on His Employment. — It is essentially a matter of degree to ascertain to what extent a claimant can impose restrictions and on what these restrictions must be based. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

The problem is whether or not the restrictions which the claimant places on his employment serve to limit the work which a claimant can accept to such a degree that he is no longer genuinely attached to the labor force. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Labor Market to Be Described in Terms of Individual. — Since, under unemployment compensation laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Rights Not Determined by Unions or Employers. — The rights of claimants to unemployment compensation must be determined by the statutory provisions of Chapter 96 rather than by rules promulgated by a union, other employee groups, and employer, employer groups, or anyone else. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Claimants, by their adherence to the terms of the guaranteed annual income provisions of their collective bargaining agreement, have placed themselves in a position which, for all practical purposes, eliminated their availability for work in contravention of the requirements of subdivision (3). In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Availability requirement is said to be satisfied when an individual is willing, able and ready to accept suitable work which he does not have good cause to refuse, that is, when he is generally attached to the labor market. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Where the Commission's findings of fact are amply supported by the evidence in the record, the Supreme Court is bound by the Commission's findings of fact. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1975

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1975 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

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Attorney General of North Carolina

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